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Goods and Services Tax

Explanatory Notes to Bill C-62 as passed by the House of Commons on April 10, 1990

Issued by
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Introduction: Structure of Bill C-62

To implement the Goods and Services (GST), Bill C-62 proposes legislative amendments to seven acts of Parliament. The principal amendments are to the Excise Tax Act, under which authority is to be given to charge, collect and administer the GST. Amendments are required to the remaining six acts as a consequence of the introduction of the GST.

The bill is structured into seven parts, each of which corresponds to the relevant act to be amended. The bill also has annexed to it three new schedules to be added to the Excise Tax Act. These schedules list those items under the GST to be tax-exempt (Schedule V), zero-rated (Schedule VI) or not taxable upon importation into Canada (Schedule VII).

Part I: Excise Tax Act (Clauses 1-18)

The most significant amendments to the Excise Tax Act are to be found in clause 12 of the bill. That clause adds two new parts to the Act.

- The purpose of new Part VIII is to cease application of the existing federal sales tax with the introduction of the GST, and to provide for the payment of FST rebates for tax-paid inventory on hand and new housing at the start-up of the GST.

- New Part IX provides for the introduction of the GST. Under this Part, GST is to apply to domestic supplies in Canada, as well as imported goods and other imported taxable supplies. It also sets out a variety of rules relating to the collection, remittance and administration of the tax, as well as provide authority for the payment of various GST rebates (for example, to charities, foreign tourists and new home buyers). An overview of the basic legislative structure of the GST (along with the new schedules to the Excise Tax Act) may be found in the introductory comments on Part IX of the Excise Tax Act, beginning at page 19 in these notes.

In addition to the two new parts of the Act to replace the existing federal sales tax with the GST, other notable amendments to the Excise Tax Act relating to the GST and contained in Bill C-62 include:

- changes to the air transportation tax (clause 2-4);
- adjustments to excise taxes on wine and tobacco products (clauses 7 and 16);
- the repeal of a number of minor excise taxes (clauses 6 and 13); and
- a new exemption for electronic point-of-sale and related inventory control equipment (clause 17).

Part II: Customs Act (Clauses 19-21)

This part contains consequential amendments that are required to prevent any double recovery of GST on imported goods -- once by claiming an input tax credit, and again by claiming a refund, rebate or drawback under the Customs Act.

Part III: Customs Tariff (Clauses 22-32)

As with the preceding part, Part III contains consequential amendments to the Customs Tariff to prevent any double recovery of GST on imported goods.

Part IV: Excise Act (Clauses 33-36)

The purpose of the amendments to the Excise Act is to adjust excise duties on spirits, beer and raw leaf tobacco to maintain current federal revenues from each of these product categories and to ensure that unintended shifts do not occur in the relative tax burden on different but competing product categories with the removal of the existing federal sales tax and the introduction of the GST.

Part V: Income Tax Act (Clauses 37-53)

An important feature of federal sales tax reform is the greater integration of consumption and income taxation in Canada. To this end, Bill C-62 contains a number of amendments to the Income Tax Act that are consequential to or connected with the introduction of the GST.

The most significant change is the replacement of the existing refundable federal sales tax credit with an enriched GST credit for lower and modest income Canadians (clauses 47 and 48). The new GST credit is to be $190 per adult and $100 per child. In total, the GST credit is to involve expenditures of about $2.4 billion annually and will provide benefits to some 8.7 million families and individuals. As a result of the new GST credit, families with incomes below $30,000 are made better off with the replacement of the existing federal sales tax by the GST.

Other amendments to the Income Tax Act are more technical in nature, such as the modifications of the method of calculating taxable employee and shareholder benefits to ensure that the taxable consumption element in such benefits is subject to GST to the same extent as they would be if purchased directly by employees or shareholders (clauses 37 and 40).

Part VI: Statistics Act (Clause 54)

This part contains an amendment to the Statistics Act to give the Chief Statistician authority to collect statistical data from returns made under the Excise Tax Act, subject to the same confidentiality restrictions relating to examinations of returns under the Income Tax Act.

Part VII: Tax Court of Canada Act (Clauses 55-65)

GST appeals are to be directed the Tax Court of Canada. To allow for this to occur, this part contains a number of consequential amendments to the Tax Court of Canada Act.

Part I: Excise Tax Act

CLAUSE 1

SUBCLAUSE 1(1)

Subsection 2(1) Definitions

The purpose of this amendment is to ensure that the definitions in subsection 2(1) of the Excise Tax Act do not apply to the provisions of the Act relating to the GST. The definitions for purposes of the GST are to be found in section 123.

SUBCLAUSE 1(2)

Subsection 2(1)

This amendment alters the definitions of the terms "municipality", "person" and "prescribed" so that they have the same meaning throughout the Excise Tax Act. This is to facilitate the administration of the Act in the context of the GST.

SUBCLAUSE 1(3)

Subsection 2(1)

This amendment provides that the expression "this Act" in Parts I to VIII of the Excise Tax Act and Schedules I to IV means the provisions of this Act other than those relating to the GST.

SUBCLAUSE 1(4)

Subsection 2(6) References to tax etc. under Act

This amendment provides that any reference to a customs or excise duty or a tax under the Excise Tax Act in a regulation or order made before 1991 should be interpreted to exclude the GST, unless the regulation or order specifically indicates the contrary.

Without this amendment, many regulations and orders referring to duties or taxes could give rise to double recovery of the GST paid by a business (because of the GST input tax credit system) and, in other cases, to a double application of the GST.

CLAUSES 2 to 4

Air Transportation Tax

Clauses 2 to 4 implement the modifications made to the air transportation tax to take into account the impact of the GST on domestic, transborder and international air travel.

SUBCLAUSE 2(1)

Paragraph 11(1)(a) Amount of Tax

This subclause changes the air transportation tax on tickets for air travel in the taxation area (Canada, the United States (excluding Hawaii) and St. Pierre and Miquelon) from 10% plus $4 to a maximum of $50, to 7% plus $10 to a maximum of $40. The maximum is prescribed by order in council on the recommendation of the Minister of Transport.

SUBCLAUSE 2(2) Charter Flights

Paragraph 11(2)(a)

With respect to charter flights, the air transportation tax on tickets purchased in Canada for air travel in the taxation area is changed from 10% plus $2 to a prescribed maximum ($25) per emplanement to 7% plus $5 to a prescribed maximum ($20) per emplanement.

SUBCLAUSE 2(3)

The new air transportation tax rates for domestic and transborder air travel apply to all tickets purchased in Canada after August 1990 for air travel beginning after 1990 and to tickets purchased outside Canada after August 1990 for air travel with an emplanement in Canada after 1990.

SUBCLAUSE 3(1)

Subsection 13(1) Amount of tax

The air transportation tax on tickets purchased in Canada for air travel with a destination outside the taxation area is increased from the current flat rate of $19 to $40 per ticket.

SUBCLAUSE 3(2)

Subparagraph 13(2)(a)(i) Charter Flights

The air transportation tax on tickets purchased in Canada for air travel by charter flight to a destination outside the taxation area is increased from the current flat rate of $19 to $40 per emplanement in Canada on an international flight.

SUBCLAUSE 3(3)

Subsection 13(2.2) Amount of tax

The air transportation tax on tickets purchased outside Canada with a first emplanement in Canada for a destination outside the taxation area is increased from the current rate of $19 to $40 per ticket. The tax on tickets purchased outside Canada for international travel (other than to the continental U.S. and the islands of St. Pierre and Miquelon) with the first emplanement outside Canada, will continue to be imposed at the current rate of $19 per ticket.

SUBCLAUSE 3(4)

The new rate structure for air travel with a destination outside the taxation area applies to tickets purchased after August 1990 in Canada for air travel beginning after 1990 and to tickets purchased after August 1990 outside Canada for air travel with an emplanement in Canada after 1990.

SUBCLAUSE 4(1)

Subsection 13.1(1) More than one amount payable

The air transportation tax applies separately to each purchase of air travel. This subsection provides that where more than one ticket is purchased at the same time for air travel on a continuous journey, the total air transportation tax payable will not exceed the tax that would have been payable had a single ticket been purchased. The amendments to this subsection will ensure that the new tax rates and prescribed maximums will apply to multiple tickets purchased for a continuous journey. Thus, for travel within the taxation area, the tax is the lesser of 7% plus $10 and the prescribed maximum ($40). For international travel, the tax is $19 if the tickets are purchased outside Canada with a first emplanement outside Canada, and $40 in any other case.

SUBCLAUSE 4(2)

The new rates of tax applicable to more than one ticket purchased for air travel on a continuous journey apply to tickets purchased after August 1990 in Canada for air travel beginning after 1990 and to tickets purchased after August 1990 outside Canada for air travel with an emplanement in Canada after 1990.

CLAUSE 5

Excise taxes

SUBCLAUSE 5(1)

Subsection 23(8)

This is a consequential amendment. The reference to section 26 of the Act is being deleted as this section, which imposes an excise tax on playing cards, is being repealed in clause 6.

SUBCLAUSE 5(2)

Subsection 23(8.1)

Excise taxes are imposed on gasoline and aviation gasoline under section 23 of the Excise Tax Act. Section 68.16 authorizes a refund of 1.5 cent per litre of the excise tax to commercial users and certain other classes of users of these fuels. Subsection 23(8.1) provides direct exemption from 1.5 cent per litre of the excise tax, in lieu of a refund, when the gasoline or aviation gasoline is sold to a person who holds a bulk permit. This system eliminates the need for refunds on fuels sold to large users.

As the refund program will be discontinued, effective January 1, 1991, for all commercial users of gasoline and aviation gasoline (see clause 10), the bulk permit arrangement will no longer be required. Thus, this amendment cancels the direct relief from the 1.5 cent per litre excise tax on purchases of gasoline and aviation gasoline after 1990 by bulk permit holders.

SUBCLAUSE 5(3)

The amendments in subclauses 5(1) and (2) are to come into force on January 1, 1991.

CLAUSE 6

Section 26 Excise tax on playing cards

This amendment repeals the excise tax imposed on playing cards under section 26 of the Excise Tax Act. The amendment comes into force on January 1, 1991.

CLAUSE 7

Section 27 Excise Tax on Wine

This amendment increases the rates of excise tax on wines as set out in paragraphs 27(a) to (c) of the Excise Tax Act. These adjustments will offset the reduction in sales tax revenues in moving from the 19% manufacturer's sales tax on wine to the 7% GST and will maintain total federal revenue from sales and excise taxes on wine at existing levels. The amendment comes into force on January 1, 1991.

CLAUSE 8

Subsection 56(3) Tax on (licence) cancellation

Through the operation of a wholesaler's licence granted under Part VI of the Excise Tax Act, a licence holder may purchase and import goods, for resale, free of sales and excise taxes. The amendment to subsection 56(3) of that Act ensures that when a wholesaler's licence is cancelled, the wholesaler must account not only for the sales tax but also the excise taxes applicable to the goods obtained free of taxes by the person by virtue of the licence and that are held in the person's inventory at the time of cancellation of the licence.

The amendment is to come into force on February 1, 1990.

CLAUSE 9

Subsection 59(3) Regulations relating to bulk permits

This amendment relates to the termination of the 1.5 cent per litre refund of the gasoline excise tax to commercial users (clause 10) and the repeal of the bulk permit provisions in subclause 5(2). The amendment repeals the authority to make regulations relating to the issuance and cancellation of bulk permits.

CLAUSE 10

Subsection 68.16(1) Payment where certain uses of gasoline

This amendment provides that the 1.5 cent per litre excise tax refund on purchases of gasoline by commercial and certain other classes of users is no longer granted in the case of gasoline purchased after 1990 by these users. However, the refund continues to be available to the physically disabled, registered charities and registered amateur athletic associations. Related amendments are contained in subclause 5(2) and clause 9.

Subsection 68.16(2) Payment where certain uses of aviation gasoline

This amendment provides that the 1.5 cent per litre excise tax refund paid to commercial users of aviation gasoline does not apply to aviation gasoline purchased after 1990.

CLAUSE 11

Subsections 80(1) and (2) Report by licence holders

The amendments to section 80 of the Excise Tax Act discontinue the requirement for persons to file an annual report (or periodic reports) in respect of taxes paid on their sales except in the case of persons holding an excise tax licence.

The amendment is to come into force on January 1, 1991.

CLAUSE 12 New Parts VIII and IX

This clause provides for the addition of two new Parts to the Act. Part VIII provides for the termination of the existing manufactures' sales tax with the introduction of the GST. Part IX provides for application of GST to supplies made in Canada, as well as imported goods and other imported taxable supplies, as of January 1, 1991. These provisions are discussed in greater detail in the following pages.

Part VIII

Transitional Provisions

This is a new Part to be added to the Excise Tax Act. Its purpose is to wind down the existing federal sales tax with the introduction of the GST. More specifically, it provides that the existing federal sales tax does not apply to goods sold or imported after 1990 and ensures that the current telecommunication and telecommunication programming services taxes do not apply to services after 1990. In addition, the Part provides for the payment of federal sales tax rebates for inventories of tax-paid new goods on hand at the start-up of the GST, and a notional credit for tax-paid used goods held in inventory on January 1, 1991, as well as federal sales tax rebates for certain new housing that is to be subject to GST after 1990.

The corresponding transitional rules relating to the GST status of transactions straddling the start-up date may be found in sections 336 to 345 of new Part IX. Provisions for the payment of a one-time transitional credit to smaller businesses are contained in section 346.

Section 117

This section provides for the phase-out of the special taxes on telecommunication programming services and telecommunication services imposed under Parts II.1 and II.2 of the Excise Tax Act.

Subsection 117(1) Meaning of "taxable service"

This subsection provides that, for purposes of the special transitional rules in section 117, the expression "taxable services" has the same meaning as in Parts II.1 and II.2 of the Act under which the telecommunication programming services and the telecommunication services taxes are imposed.

Subsection 117(2) Part II.1 and II.2 tax

Subsection 117(2) of the Excise Tax Act provides that neither the telecommunication programming services tax nor the telecommunication services tax apply to services which are billed after August 1990 and provided after 1990, as well as to any services billed after April 1991. Since the GST applies to services provided after 1990 or billed after April 1991, this subsection prevents the double taxation of telecommunication and telecommunication programming services.

Subsection 117(3) Idem

Subsection 117(3) provides that for services straddling the GST start-up date and billed after August 1990, the existing telecommunication and telecommunication programming services taxes apply to all services supplied to users in 1990. Thus, the amounts billed for periods straddling January 1, 1991 are prorated for purposes of imposing the existing taxes on amounts in respect of services provided before 1991 and the GST on amounts in respect of services after 1990.

Section 118

This section and section 119 provide the transitional rules for phasing out the federal manufacturers' sales tax imposed under Part VI of the Excise Tax Act.

Subsection 118(1) Tax under Part VI

The purpose of this subsection is to ensure that the federal manufacturers' sales tax does not apply to any goods sold or imported after 1990, to avoid the double taxation of the goods, since starting on January 1, 1991 they are subject to GST. The four paragraphs in this subsection cover the various situations where the federal sales tax cases to apply.

Currently, the federal sales tax is payable by the manufacturer of goods at the earlier of the time the goods are delivered or ownership of the goods is transferred to the purchaser. In the case of imported goods, the tax is payable when they are declared for customs purposes. Where goods have been acquired tax-free by a licensed wholesaler, the wholesaler accounts for the tax when the goods have been delivered to the purchaser (or, by virtue of subsection 118(2), at the time property in the goods passes to the purchaser). Finally, where goods are retained by the manufacturer or a licensed wholesaler for their own use or for rental purposes, the tax is payable at the time the goods are retained.

Subsection 118(2) Idem

Subsection 118(2) covers a situation that is peculiar to sales of goods acquired tax-free by a licensed wholesaler. Normally, federal sales tax is payable by the licensed wholesaler at the time the wholesaler delivers the goods to the purchaser. A situation could arise on transition to the GST where title to goods sold by a licensed wholesaler passes to the purchaser before 1991 but delivery is not made to that purchaser until after 1990. In such a situation, since title to the goods had passed to the purchaser before 1991, no GST would be payable.

Subsection 118(2) provides that where title to goods sold by a licensed wholesaler passes to the purchaser before 1990, the day the property in the goods passes is considered to be the day the goods are delivered to the purchaser. This ensures that federal sales tax applies to the goods.

Subsection 118(3) Idem

Where a manufacturer sells goods under an instalment payment plan, subparagraph 50(1)(a)(ii) of the Excise Tax Act requires that the federal sales tax be paid by the manufacturer at the time each of the instalments becomes payable in accordance with the terms of the instalment contract. This rule applies whether the contract provides that the goods are to be delivered or property in the goods is to pass before or after payment of any or all instalments.

Subsection 118(3) provides that, in the case of an instalment payment contract entered into before November 1989, no federal sales tax is payable by the manufacturer on those instalments that become payable after 1990. The instalments payable after 1990 are subject to the GST. Paragraph (3)(b) ensures that the rule in subsection 152(1) that treats the consideration for a supply as becoming due when the invoice is issued does not apply to instalments that actually become payable after 1990 under instalment payment plans entered into before November 1989.

Subsections 118(4) and (5) Idem

For purposes of the transition to the GST, instalment payment contracts entered into after October 1989 will be treated somewhat differently from contracts entered into before November 1989 (these are covered in subsection 118(3)). Subsection 118(4) covers the situation where the goods sold under an instalment payment contract have not been delivered or title to them has not passed to the purchaser before 1991. In this case, the federal sales tax does not apply to any instalments that become payable under the contract after 1990. The GST applies to any payments made after 1990.

Where goods sold under an instalment payment contract are delivered or title to them passes to the purchaser before 1991, subsection 118(5) provides that the federal sales tax applies to all instalment payments payable after November 1990 and the tax is payable on December 31, 1990. As a result, none of the payments made in respect of the goods are subject to GST.

Paragraph (4)(b) ensures that the rule in subsection 152(1) that treats the consideration for a supply as becoming due when the invoice is issued does not apply to instalments that actually become payable after 1990 under these payment plans.

Subsection 118(6) Idem

Subsection 118(6) sets out a special rule where a manufacturer's instalment payment contract entered into before November 1989 is altered after that date. Where amendments or alterations are made to the schedule of instalments payable during the period November 1, 1989 to December 31, 1990 (except where these amendments or alterations are reasonable to accommodate a change in the total consideration payable under the contract), the provisions of subsection 118(5) described above will apply to the contract.

Subsection 118(7) Continuous supplies

This subsection applies where an invoice is issued on a regular or periodic basis for goods that are delivered on a continuous basis by means of a wire, pipeline or other conduit. Where the invoice is issued by the vendor to the purchaser after August 1990, the manufacturer's sales tax is not payable by the vendor to the extent that the goods are delivered or title to the goods passes to the purchaser after 1990. Thus, the existing tax applies to the value of goods delivered before 1991 and the GST to deliveries after that date.

Subsection 119(1) Revocation of approval

A person who is a licensed manufacturer under the Excise Tax Act often will acquire, for resale, goods that are similar goods to those of the person's own manufacture. The person may apply to the Minister of National Revenue to have these similar goods treated for federal sales tax purposes as if they were of the person's own manufacture. Approval of the application enables the person to acquire the similar goods free of tax and to account for tax in the same way as goods of the person's own manufacture. Should the approval subsequently be revoked, the person is required to account for tax on the goods acquired tax-free that were in inventory on the date set out in the notice of revocation.

Subsection 119(1) provides that, if the date of revocation of such an approval is after 1990, no federal sales tax is payable on the goods. The GST will apply on the disposition the goods after 1990.

Subsection 119(2) Wholesaler's licence cancellation

Subsection 119(2), which applies in the case of a person who is a licensed wholesaler under the Excise Tax Act, is similar in principle to subsection 119(1). Its purpose is to prevent double taxation of goods.

By virtue of the licence, a licensed wholesaler may obtain goods, for resale, free of sales and excise taxes and subsequently account for tax when that wholesaler delivers the goods to a purchaser. At the time the licence is cancelled, the wholesaler is required to account for tax on any goods still in inventory that had been obtained tax-free under licence.

Subsection 119(2) provides that when the licence cancellation occurs after 1990, federal sales tax is not payable on the goods. The subsequent disposition of the goods by the wholesaler is subject to GST.

Section 120 Sales tax inventory rebate

This section authorizes the payment, to persons registered for GST purposes, of a federal sales tax rebate in respect of new tax-paid goods held in inventory in Canada by the person at the beginning of January 1, 1991. The purpose of the sales tax inventory rebates is to ensure that new goods held in inventory on January 1, 1991 for re-supply do not bear both the federal sales tax and the GST after 1990. Read together with section 176, this section also provides for a notional input tax credit to registered vendors in respect of used tax-paid goods that are held by them in inventory as of January 1, 1991 and are for resale or lease.

Subsection 120(1) Definitions

Subsection 120(1) defines the expressions "capital property", "inventory", "sales tax" and "tax-paid goods" for purposes of section 120. Included in a person's inventory are goods held for taxable supply by way of sale, lease or rental as well as new and unused contractor's building materials that have not been delivered to a job site. Inventory does not include goods that are capital properties of the person or are building materials for use in the construction, renovation or improvement of capital properties of the person. For example, a landlord might maintain a stock of building materials (e.g., lumber, electrical supplies etc.) for use in maintaining, repairing or renovating a building leased by the person to other businesses. Such materials do not qualify as inventory for purposes of the sales tax rebate. Tax-paid goods include goods, whether new, used, or rebuilt and remanufactured, in respect of which the federal sales tax has been paid. However, for purposes of the sales tax rebate, a manufacturer's or licensed wholesaler's inventory does not include goods which the manufacturer or wholesaler has agreed to supply under an instalment payment plan and in respect of which federal sales tax has been paid on instalments received as of January 1, 1991. Therefore, the manufacturer or wholesaler will not be able to claim a rebate on these goods.

However, subsection 120(2) sets out rules for determining the extent to which the goods may qualify as inventory (and therefore eligible for a rebate) of the person who is the purchaser under the contract.

Subsection 120(2) Goods in inventory

This subsection deals with the situation where under a manufacturer's sales contract calling for instalments to be paid by the purchaser of the goods (see subsection 118(4)), sales tax has been paid on instalments in respect of goods that have been delivered to the purchaser before 1991 or title to which has passed to the purchaser before 1991.

In these circumstances, only the purchaser may include these goods in inventory for sales tax rebate purposes under section 120 and, then, only to the extent of the instalments made before 1991 under the contract in respect of such goods.

Subsection 120(3) Rebate of sales tax

Paragraph(3)(a) requires the Minister of National Revenue to pay a sales tax rebate to a person registered for GST purposes upon appropriate application by the registrant. Paragraph (3)(b) provides that tax-paid goods held in a registrant's inventory as of January 1, 1991 that are used goods are treated as though they were acquired by the registrant under circumstances which would give rise to a notional input tax credit entitlement under section 176. As a result, the registrant is able to claim an input tax credit on the regular GST return. The value of the credit is approximately equal to 3.3 per cent of the value of the inventory of used goods on January 1, 1991 as it would be determined at that time for income tax purposes. The inventory value for income tax purposes is generally determined by reference to the cost of the goods and their fair market value, whichever is lower.

Subsection 120(4) Taking of inventory

For purposes of the sales tax rebate, the claimant's inventory must be determined as of the beginning of January 1, 1991.

This determination may be done by way of a physical count of goods on that day. However, in the interest of simplification, an estimated inventory may be used, based on an inventory count taken before or after January 1, 1991, where the Minister of National Revenue is satisfied that the claimant's inventory control system permits a reasonable determination of the inventory as at January 1, 1991. In determining the value of their inventories, claimants should employ the same methods as used to value inventories for income tax purposes.

Subsection 120(5) Determination of rebate

The method and factors to be used to determine the amount of the sales tax rebate are to be prescribed by regulation. The calculation of the rebate amount will be based on prescribed rebate percentages applied to the inventory value of the goods, in all cases. There will be one general rebate percentage applied to the vast majority of tax-paid goods. Separate rebate percentages will be prescribed for construction materials (currently subject to the lower 9% rate) and motor vehicles. Rebates in respect of gasoline and diesel fuel will be a specific amount per litre, based on the sales tax rate per litre on these fuels on

December 31, 1990. Given the practical difficulty of differentiating firms by trade level, the inventory rebate percentages will be the same for all businesses having FST-paid inventories. This will simplify the claiming of the sales tax rebate and the administration of the rebate program.

The rebate determined under this subsection may be reduced, by virtue of subsection 337(7), in the case of certain goods that are sold to a consumer and are pre-paid before September 1990 (see the commentary on subsection 337(7)).

Subsection 120(6) Application of Parts VI and VII

The current provisions of the Excise Tax Act (in Parts VI and VII) relating to the manufacturer's sales tax apply with respect to applications for and payments of sales tax inventory rebates, other than the provisions of subsection 72(7) relating to interest payments on refunds. Subsection 120(7) provides rules for the payment of interest on sales tax inventory rebates.

Subsection 120(7) Interest on payments

Interest is paid on sales tax inventory rebates at the prescribed rate beginning on the later of March 1, 1991 and the day that is 21 days after the application for the rebate is received by the Minister, and ending on the day on which the rebate is paid. Regulations will prescribe the formula by which the rate of interest in effect during any calendar quarter is calculated.

Subsection 120(8) Limitation

This subsection provides that sales tax inventory rebate claims must be filed before 1992. No rebate claim filed after 1991 will be paid.

Section 121 New housing sales tax rebate

Under the GST, new housing will be taxable on the sale price to consumers. In the absence of any special provisions, a new house that is partially built or completed prior to start-up of the GST but the sale of which is not completed until after 1990 would be subject to a degree of double taxation because the price of such housing would also reflect a significant federal sales tax component as a result of the application of the tax to construction materials. To address this, rebates of the federal sales tax embodied in newly constructed housing at the time of the start-up of the GST are provided for under this section.

In the one case, the rebate is payable to an individual purchasing a new home or to a builder renting out a new house where the individual or tenant takes possession for occupancy after 1990 and before April 1991. In the other case, the rebate is payable to the builder of a new residential apartment or condominium building. In the case of an apartment building, the builder must own the building or have possession of it immediately before 1991 and, as at that time, must not have transferred ownership or possession of the building to a person who is not a builder (i.e., a person who would not be required to collect GST on a re-supply of the property). In the case of a condominium building, the rebate applies on a unit-by-unit basis.

It should be noted that, under section 336, certain sales of new houses to individuals are "grandfathered" if made pursuant to agreements entered into on or before October 13, 1989 (the date of release of the draft GST legislation). Where this is the case, the GST does not apply and a sales tax rebate is not available under section 121 in respect of the house (see subsection 336(2)).

Subsection 121(1) Definitions

Subsection 121(1) defines certain expressions for purposes of the rebate under section 121. These expressions are:

"estimated federal sales tax"

- based on the estimated federal sales tax content per square metre in a comparable property completed prior to January 1, 1991,

"specified residential complex"

- includes a residential condominium unit and a rental apartment building, where the construction or substantial renovation of the unit or building was not substantially completed before 1991, or where, before 1991, the builder had neither occupied the unit or building as a place of residence nor leased it to another person who is not the purchaser of the unit or building under an agreement of purchase and sale.

"specified single unit residential complex"

- includes a residential complex (other than a residential condominium unit or a mobile home), such as a detached house, semi-detached house or attached house, that does not contain more than one residential unit. The same conditions apply with respect to the degree of completion and occupation of the complex as are noted above for condominium units and apartment buildings.

Subsection 121(2) Rebate for specified single unit residential complex

Subsection 121(2) provides authority for the Minister of National Revenue to pay a sales tax rebate where a builder has begun before April 1991 the construction or substantial renovation of a specified single unit residential complex and

(i) gives possession of the complex to a person under a lease, licence or similar arrangement and is thereby required under subsection 191(1) to pay tax, or

(ii) makes a taxable sale of the complex to an individual,

and the person or individual, as the case may be, first took possession of the complex after 1990 and before April 1991.

In such circumstances, and provided that the complex was substantially completed before April 1991, the rebate, if any, is payable, in the case of a rental, to the builder or, in case of a sale, to the purchaser. The rebate is equal to a fraction of the estimated federal sales tax for the complex. The rebate is reduced to the extent of any rebate in respect of the complex paid to any other person under this subsection.

The fraction of the estimated federal sales tax is

> (i) 2/3, where the complex is substantially completed and possession is transferred before February 15, 1991, and
>
> (ii) in any other case, 1/3 provided that the complex is substantially completed and possession is transferred before April 1991.

Subsection 121(3) Rebate for specified residential complex

Subsection 121(3) provides authority for the Minister of National Revenue to pay a sales tax rebate to a builder of an apartment building or other specified residential complex who, immediately before 1991, owned or had possession of that complex under an agreement to sell the complex to anyone who does not qualify as a "builder" (i.e., a person who would not be required to collect tax on a re-supply of the complex). Hence, a builder of an apartment tower would not be entitled to claim a rebate of the federal sales tax and avoid GST on a sale of the building to a landlord by transferring possession of the tower prior to 1991 and ownership after 1990. Where, before 1991, a builder transfers possession of an unoccupied specified residential complex to a purchaser who would be treated as a "builder" (e.g., the purchaser is acquiring such an apartment tower for resale), the purchaser would be entitled to claim a rebate of federal sales tax under this section since the resale of the complex by the purchaser will be subject to GST. It should be noted that the vendor in this case would also be entitled to claim a rebate under this section. However, the rebate payable to any builder under this section is equal to the stated percentage of the estimated federal sales tax for the complex less the amount of any rebate in respect of the complex paid to any other person under this subsection in respect of the complex.

In the case of a specified residential complex, the stated percentage of the estimated federal sales tax is:

> (i) 50%, where the apartment building, or the condominium complex in which the unit in question is situated, as the case may be, was on January 1, 1991, more than 25% completed and not more than 50% completed, and
>
> (ii) 75%, where the building or condominium complex was, on January 1, 1991, more than 50% completed.

The federal sales tax rebate in respect of a condominium complex operates on a unit-by-unit basis. For the purpose of calculating the rebate in these cases, a builder would determine the aggregate floor space of all units eligible for a rebate of federal sales tax, determine the estimated federal sales tax embodied therein and claim either 50% or 75% of that estimated federal sales tax based on the degree of completion of the entire complex.

The reference in this subsection to the builder of the complex does not include a person to whom, by reason of subsection 191(5) of the Excise Tax Act, subsections 191(1) to (4) do not apply. Thus an individual who builds a residential complex for his or her own use as a residence is not treated as a builder for the purposes of this rebate.

Subsection 121(4) Application for rebate

In order to qualify for a rebate under this section the applicant must apply for it before 1995.

Subsection 121(5) Application of section 191

This subsection ensures that where a builder has "self-supplied" a residential complex as defined under the rules in section 191 prior to the coming into force of Part IX of the Excise Tax Act, the complex does not qualify as a specified residential complex or as a specified single unit residential complex. In such a case, a rebate of federal sales tax is not available since any sale of the complex after 1990 by the builder is not subject to GST under Part IX of the Act.

Subsection 121(6) Application of Parts VI and VII

This subsection provides that the requirements respecting applications for sales tax rebates under section 121 and the payment of such rebates are the same as those under existing section 72 of the Excise Tax Act.

Part IX

Goods and Services Tax

Legislative Structure of the GST: Overview

The legislative provisions relating to the Goods and Services Tax (GST) are to be included in the new Part IX of the Excise Tax Act. Part IX contains nine Divisions and three Schedules. These are briefly outlined below.

Division I - Interpretation

This Division starts at section 123 and provides definitions of terms and expressions used throughout Part IX of the Act. It sets out a number of basic concepts underlying the tax. Under Division II, GST applies to taxable supplies of property and services made in Canada by a registrant engaged in a commercial activity. The tax is imposed on the recipient of the supply. The amount of the tax is determined by reference to the consideration payable for the supply. Division I sets out the rules for determining what constitutes a supply and a commercial activity. It also contains provisions to determine whether a supply is made in or outside Canada. Finally, it spells out the rules for determining when the consideration for a supply becomes due, which, in turn, determines the timing of liability for GST.

Division II - Imposition of Tax

Under the GST, tax is imposed on the recipient of a taxable supply and is generally required to be collected from the recipient on behalf of the Receiver General by the person making the supply, where that person is a registrant. A registrant is entitled to claim an offset (referred to in the legislation as an "input tax credit") against the tax collected in a reporting period for the GST paid in the period for any property (including capital property) and services for use in the registrant's commercial activities. The difference between the tax collected and the input tax credits for a reporting period is referred to as "net tax". If positive (that is, tax collected exceeds tax paid) the net tax is required to be remitted to the Receiver General. Conversely, the net tax is refunded to the registrant by the Minister of National Revenue where input tax credits exceed tax collected in a reporting period.

Division II starts at section 165 and sets out the rules for determining the GST payable, including the time at which it becomes payable, and the input tax credit with respect to any particular supply. Subdivision c provides a number of special rules for these purposes, while Subdivision d sets out the rules relating to the input tax credits with respect to capital properties.

Division III - Tax on Importation of Goods

Under Division III, the GST is imposed on the excise and duty-paid value of imported goods (other than zero-rated goods). Division III starts at section 212 and sets out the rules relating to imports.

Division IV - Tax on Imported Taxable Supplies other than Goods

The GST applies to the importation of certain services and intangible property for use in Canada other than in the course of a commercial activity. Division IV starts at section 217 and sets out the rules relating to the tax on such importations.

Division V - Collection and Remittance of Tax

Registrants are required to file a GST return for each reporting period. Where the tax collectible in the reporting period on supplies exceeds the input tax credits claimed for the period, the balance (referred to as "net tax") is required to be remitted to the Receiver General. Where the total of all credits claimed exceeds the taxes collectible for the reporting period, the excess is refunded to the registrant.

Division V starts at section 221 and sets out the rules for determining the reporting periods and the calculation of the net tax remitted by or refunded to GST registrants. It also sets out the registration rules and the provisions relating to the collection and refund of GST.

Division VI - Rebates

Rebates of GST are payable to foreign tourists, employees, charities, non-profit organizations and to certain public sector bodies such as municipalities, universities, schools and hospitals. In addition, a GST rebate is payable on the purchase of new homes by individuals, on the purchase of shares by individuals in co-operative housing corporations and on the GST paid where individuals build their own homes on their own land. GST rebates are also payable in certain circumstances when non-registrants make taxable supplies of real property.

Division VI starts at section 252 and sets out the rules relating to GST rebates.

Division VII - Miscellaneous

Division VII, beginning at section 265, sets out a miscellany of provisions relating to the application of GST in special circumstances. Subdivision a deals with trustees in bankruptcy, receivers and executors of estates of deceased persons. It also sets out special rules relating to distributions by trusts. Subdivision b sets out special rules applicable to corporate amalgamation, liquidations and joint ventures. Subdivision c provides general rules relating to tax avoidance.

Division VIII - Administration and Enforcement

Division VIII starts at section 275 and provides authority for the administration and enforcement of the GST. For the most part, the provisions parallel those in the Income Tax Act relating to tax administration and enforcement.

Division IX - Transitional

In many cases, the normal rules governing the application of tax also determine the applicability of the GST to transactions straddling the start-up date (January 1, 1991). However, special rules are required in certain circumstances -- for example, in the case of supplies prepaid before January 1, 1991, but not delivered until afterwards.

Division IX, beginning at section 336, sets out a number of rules dealing with transactions straddling the start-up date.

Schedule V - Exempt Supplies

Certain supplies fall into the category of exempt supplies and are not subject to GST. Persons making such supplies are not entitled to claim input tax credits for the GST payable on property and services acquired for use in making exempt supplies. Schedule V lists exempt supplies under the GST. Exemptions are grouped into eight categories:

- real property (sales of used residential units, residential rentals, and the conversion of farmland to personal use);
- health care services;
- educational services;
- child and personal care services;
- legal aid services;
- public sector bodies;
- financial services (domestic); and
- ferry, road and bridge tolls.

Schedule VI - Zero-Rated Supplies

Technically, zero-rated supplies are taxable supplies, but the rate of tax thereon is zero percent. Consequently, while no tax applies on a zero-rated supply, unlike an exempt supply any GST on property and services relating to the making of zero-rated supplies may be claimed as an input tax credit. Schedule VI lists zero-rated supplies under the following headings:

- prescription drugs;
- medical devices;
- basic groceries;
- agricultural and fishery products;
- exports;
- travel services;
- transportation services;
- international organizations and officials; and
- financial services (exports).

Schedule VII - Non-Taxable Importations

Division III imposes GST on imported goods. Schedule VII lists those imported goods that are not subject to the tax.

The Goods and Services Tax

Application

Section 122 Application

This section provides that the GST (that is, Part IX of the Excise Tax Act) is binding on Her Majesty in right of Canada or a province relative to supplies made by those bodies. Thus, both the federal and provincial governments are required to collect and remit GST on taxable supplies they make to other persons. The GST is also binding on prescribed agents of Her Majesty in right of Canada.

Division I

Interpretation

Section 123 Definitions

This section contain definitions of words and expressions that apply throughout Part IX and in the Schedules thereto relating to the GST.

Subsection 123(1) Definitions

The more significant defined terms defined in subsection 123(1) are:

"builder" The definition of builder is integral to certain sections of the legislation dealing with the treatment of residential real property. The term is used extensively in the self-supply rules in Subdivision c of Division II, in the list of exempt supplies of real property (see Schedule V to the Act), and in section 254 which provides for new housing rebates to be paid to individuals purchasing new homes from a builder.

For the purposes of the GST, the term, "builder", covers

(a) persons undertaking the construction or substantial renovation of a residential complex (defined below) on their own land - or engaging another person to do so;

(b) persons acquiring an interest in a residential complex before it is substantially complete;

(c) manufacturers of mobile homes (this enables individuals to claim a new housing GST rebate when they purchase a new mobile home if it is to be used as their primary place of residence);

(d) persons who acquire an interest in a residential complex before it has been occupied (or, in the case of a residential condominium unit, when the condominium complex is not registered as a condominium) for the primary purpose of reselling the complex, any part of the complex, or an interest in the complex (which can include a right to purchase the complex); and

(e) persons deemed to be builders under subsection 190(1).

Paragraphs (a) and (b) ensure that a developer-landlord who constructs a new apartment building (or purchases an incomplete building to finish it) for the purpose of renting to tenants is subject to the self-supply rules contained in section 191. Under section 191, GST applies at the time the construction or substantial renovation is substantially complete and the complex is first occupied. This ensures that a landlord who constructs an apartment building is given comparable treatment to a landlord who purchases a newly-completed apartment building for rental purposes.

It should also be noted that the effect of paragraphs (a), (b) and (d) is to ensure that an individual purchasing a new residential unit for use as a primary residence will be able to claim a new housing rebate under section 254 even if the individual is purchasing from a person who did not actually construct or renovate the complex. This is because one of the necessary preconditions for obtaining the housing rebate is that the individual must purchase the complex from the builder. For example, the marketing subsidiary of a construction company may purchase a new complex from the construction company and resell it. In this case, the subsidiary would be treated as the builder.

Two groups are specifically excluded from the definition of builder. The first group are individuals described in paragraphs (a) to (d) who construct or substantially renovate a residential complex otherwise than in the course of a business or an adventure or concern in the nature of trade. This ensures that individuals who build or substantially renovate their own homes are not subject to the self-supply rules in Section 191. The second exclusion is for persons described in paragraphs (a) to (c) whose interest in a residential complex is a right to purchase the complex from the builder other than for purposes of resupply. This ensures that a person who merely enters into a purchase and sale agreement with a builder before the complex is completed is not treated as a builder.

"business" This has a similar meaning as in the Income Tax Act but also includes certain rental activities that, for income tax purposes, would be considered as giving rise to income from property. Moreover, it should be noted that there is no expectation of profit test in the determination of whether a person is engaged in a business for GST purposes. The definition of business is particularly relevant for the purposes of determining whether a person is engaged in a commercial activity as defined below.

"capital property" A capital property of a person, for GST purposes, refers to any property that is (or would be if the person were a taxpayer under the Income Tax Act) a capital property of the person within the meaning of that term under the Income Tax Act, other than any property described in class 12 (property the cost of which is depreciable at 100%) or 14 (patents, franchises and certain other intangible property) of the capital cost allowance schedule.

"commercial activity" This term sets out activities of a person that are held to be commercial activities and is an important term in the context of the GST. With the principal exception of small traders who do not choose to become GST registrants, anyone engaged in a commercial activity in Canada is required to collect and remit tax on taxable supplies they make in the course of any such activity. As registrants, they also are able to recover tax paid on supplies acquired by them for use in the course of any such activity. Certain activities of organizations established on a non-profit basis that are commercial activities also fall within the scope of the GST. Exclusions from the definition of commercial activity are identified in paragraphs (d) to (f). Among the excluded activities are activities relating to the supply of financial services, health and educational services, as well as other exempt supplies set out in Schedule V to the legislation. Also excluded from the definition of commercial activity are activities relating to an office or employment and hobbies and other activities of an individual without a reasonable expectation of profit.

Activities involved in starting or winding up a commercial activity that is a business or an adventure or concern in the nature of trade are, pursuant to subsection 141(5), treated as part of the business, adventure or concern. This allows input tax credits to be claimed for purchases made during the start-up or winding-up phase of operations.

"consideration fraction" In the context of the GST, "consideration" generally means the amount, net of tax, paid or payable to a supplier by the recipient of the supply. The consideration fraction provides a method of calculating the value of the consideration for a supply in those instances when a GST-included amount is charged to the recipient. For example, where the price for a supply is expressed as $321 on a tax-included basis, by applying the consideration fraction to that amount (i.e. $321 x 100/107ths) the value of the consideration for the supply is determined to be $300. The consideration fraction is not relevant when GST is charged on a tax-extra basis.

"consumer" This refers to an individual who is the recipient of a supply of property or a service for that individual's personal use or consumption and not for use in a commercial activity or in the making of an exempt supply by the individual. The word "consumer" has a much narrower meaning than is the case under the provincial retail sales tax statutes. GST imposed on an individual as a consumer is not recoverable through the input tax credit mechanism.

"credit union" This term has the same meaning as under the Income Tax Act except that it is extended to include the stabilization funds of credit unions, as defined in that act.

"debt security" A debt security is included as a financial instrument and is relevant for the purposes of the definition of a financial service discussed below. A debt security is defined as a right to be paid money, including the obligation that arises when money is placed on deposit with a financial institution. Specifically excluded from the definition is a lease, licence and similar arrangements relating to property. This exclusion ensures that the rental of property is treated as a supply of that property for GST purposes and not as a financial service.

"exclusive" This term has the same meaning as "all or substantially all" (that is, 90 per cent or more), and is relevant in determining a registrant's input tax credit. Thus where 90 per cent or more of a property or service acquired by a person is for use in a commercial activity, the supply will be treated as being for use exclusively in that activity and a full input tax credit may be claimed for the GST thereon. As a result, the tax need not be prorated even though some part of the use (but not more than 10 per cent) is in connection with an exempt activity. This 10 per cent de minimus test does not apply to financial institutions as defined in section 149. The term "all or substantially all" and, therefore, the term "exclusive" for a financial institution means 100 per cent.

"exempt supply" This term refers to a supply of property or a service included in Schedule V to the legislation and includes a supply of used residential property and the vast majority of educational, health and dental services. It also includes those financial services specifically exempted in Schedule V. Exempt supplies are not subject to GST. However, persons making exempt supplies are not able to claim input tax credits to recover GST paid on purchases to the extent such purchases are for use in making those supplies.

"fair market value" In certain limited circumstances, the consideration for a supply of property or service, such as a supply between non-arm's length parties, is treated as being the fair market value of the property or service. Fair market value for this purpose generally excludes the GST and any provincial retail sales taxes.

"financial instrument" This term is relevant for the definition of a financial service since a financial service is generally defined as an activity involving a financial instrument. A financial instrument is defined to include the following items:

- a debt security;
- an equity security;
- an insurance policy;
- an interest in a partnership or trust;
- a precious metal; and
- an option or contract traded on a recognized commodity exchange.

A number of these terms are defined elsewhere in this section.

Also included in the definition of a financial instrument are guarantees, indemnities, options and other contracts for the future supply of money or financial instruments. Including these items as financial instruments is intended to exempt from the GST many of the products currently offered in financial markets, including banker's acceptance fees, letters of credit, foreign exchange future contracts and interest rate and swap fees.

"financial service" For GST purposes, a financial service falls into the category of an exempt supply included in Schedule V unless (as in the case of most services rendered to non-residents) it is specifically listed in Schedule VI as a zero-rated supply. The definition of a financial service relies upon the definition of a financial instrument and includes the following types of services:

- the exchange, payment, or transfer of money (e.g., currency, postal notes, cheques and bills of exchange) by physical or electronic means; for example,the exchange of currency includes automatic teller machine services and services associated with debit cards;

- the operation or maintenance of a savings, chequing or deposit account, including withdrawal fees, cheque processing fees, penalty fees and non-sufficient funds charges;

- the lending or borrowing of a financial instrument, including such activities as securities lending;

- the issue, transfer of ownership or repayment of a financial instrument (which includes factoring and the purchase and sale of securities);

- activities associated with the guarantee or acceptance of a financial instrument, such as loan guarantees and bankers' acceptances;

- the payment or receipt of interest and dividends in respect of a financial instrument (such as the paying of interest on a deposit account or the payment of dividends from an investment plan) and the activities surrounding the maintenance of an insurance policy and the payment of claims;

- the making of a deposit or the lending of money;

- the underwriting of a financial instrument such as an insurance policy, an equity security or a debt security;
- services related to credit or charge card operations, including discounts charged to merchants and card member fees;
- agreeing to provide, or arranging for, the services or activities described above, such as the activities that are normally performed by insurance agents, mortgage brokers and investment dealers;
- the services of insurance adjusters;
- leases and the supply of services between two members of a closely related group where the group includes a listed financial institution, if the two members jointly file an election under subsection 150(1); and
- a portion of the services provided by income tax discounters, as determined in section 158.

Specifically excluded from the definition is the payment or receipt of money as consideration for a good or service other than a financial service. Therefore, the payment of money for, say, an automobile or a haircut is not a financial service.

A range of services which are sometimes associated with financial transactions are excluded from the definition of a financial service and, therefore, are taxable. These include the provision of financial advice, (other than the services of insurance adjusters), management services to investment plans, the services of appraisers and the services of professionals such as lawyers and accountants.

Also excluded from the definition of a financial service is the receipt or payment of money in respect of the settlement of a claim other than under an insurance policy. As a result, the settlement of a claim under a product warranty is not a financial service.

"improvement" An improvement is defined as property or service acquired or imported for use in improving a capital property of a person to the extent the consideration for the property or service is included in determining the adjusted cost base of the capital property for purposes of the Income Tax Act (or would be so included if the person were a taxpayer under that Act). Thus, an improvement would not include repairs and maintenance expenses relating to capital property.

"insurance policy" An insurance policy is included in the definition of a financial instrument and, therefore, is relevant for the purposes of defining a financial service. This term is also used in the definition of financial institution. Included in the definition of insurance policy are life insurance polices, as well as property and casualty insurance policies, issued by persons licensed or authorized under the laws of Canada or a foreign jurisdiction to carry on an insurance business. For GST purposes, the definition includes reinsurance policies, annuity contracts and segregated fund contracts. Also included are contracts which are in the nature of accident and sickness insurance, whether or not these are provided by a registered insurer. All other types of insurance, such as product warranties, are excluded from the definition of an insurance policy -- and, consequently, from the definition of a financial service -- unless provided by a registered insurer.

"listed financial institution" This term is relevant for the purposes of the rules in section 150 which allow members of a closely related group to elect to treat certain supplies as exempt. A listed financial institution is defined by reference to paragraph 149(1)(a) and includes many of those institutions commonly viewed as financial institutions.

"person" This term has a broad meaning. It includes an individual, a corporation and virtually all other types of organizations. An important difference with the corresponding definition in the Income Tax Act is that a partnership is treated as a person for purposes of the GST.

"personal property" This term refers to both tangible and intangible property of any kind whatever, other than real property. Because "property" is defined to exclude money, the definition of personal property also excludes money.

"property" Property is defined to mean property of any kind whatever, other than money.

"qualifying subsidiary" This term is relevant for the definition of closely related corporation contained in section 128. Members of a closely related group may, under certain circumstances, elect to have certain intra-group supplies be treated as exempt or as having been made for nil consideration. This definition has three components. First, where a corporation owns at least 90 per cent of the value and number of full voting shares of the capital stock of another corporation resident in Canada, the latter corporation is considered to be a qualifying subsidiary of the parent corporation.

Second, paragraph (a) provides that if corporation C is a qualifying subsidiary of B and B is a qualifying subsidiary of A; then C is considered to be a qualifying subsidiary of A.

And finally, paragraph (b) provides that a credit union is a qualifying subsidiary of all other credit unions. Thus, where a corporation is jointly owned by a group of credit unions, the corporation is considered to be closely related to each of the credit unions if, together, the credit unions satisfy the 90 per cent share ownership test contained in section 128.

"real property" Real property is defined to include land and buildings, as well as leasehold interests in such property. It does not include security interests in real property such as mortgages and liens, which are treated as "financial instruments" for GST purposes.

"recipient" In relation to any supply of property or service made by a supplier, a recipient is the person who agrees to give consideration for the supply or, if consideration is not to be given, the person who receives the supply. In the case of a straightforward sales transaction, the purchaser is the recipient. Under the GST the recipient is liable for payment of the tax. A registered supplier, as under provincial retail taxes, is required to collect and remit the tax imposed on a taxable supply.

"registrant" Registrants under the GST are required to file periodic returns with the Minister of National Revenue. A registrant includes not only a person registered for GST purposes, but also a person who is required under the rules in Section 240 to apply for registration. Under Subdivision d of Division V, persons engaged in a commercial activity will be required to be registered unless they are small suppliers, non-residents not carrying on a business in Canada, or persons whose only taxable supply is the sale of real property otherwise than in the course of a business.

"residential complex" This is an important definition in determining whether the rental or resale of a residential building falls within Schedule V to the Act as an exempt supply. "Residential complex" includes owner-occupied single family homes, mobile homes, semi-detached homes, condominiums and multi-unit apartment buildings, together with the related land and common areas associated with such buildings. It does not, however, include a hotel, motel or other similar establishment that provides all or substantially all of its accommodation for periods of less than 60 consecutive days. A building generally constitutes a residential complex to the extent that it includes residential units (defined below). For example, in the case of a building where the bottom story is used as a shopping concourse and the five storeys above are rented out as apartments, only the five storeys would be considered to be a residential complex. A residential complex includes a single family dwelling in which a business (including the business of running a hotel) is carried on provided that the dwelling is used primarily as a place of residence for individuals. Yachts and houseboats are not considered to be residential complexes.

"residential unit" A residential unit is a house, mobile home, apartment, suite, hotel room or similar premises used or intended for use as a place of residence or lodging for individuals.

"sale" A sale is defined to include any transfer of the ownership of property. Therefore, a gift of property or a transfer under a barter transaction would constitute a sale. As well, sale includes a transfer of the possession of property under an agreement to transfer ownership of the property.

"segregated fund" This has a meaning similar to that assigned to the term under the Income Tax Act. A segregated fund is treated as a separate person and is defined as a listed financial institution for GST purposes.

"service" Service has a broad meaning covering basically anything other than property, money and a supply of services rendered by an employee to an employer.

"specified tangible personal property" is similar to "listed personal property" under paragraph 54(e) of the Income Tax Act and is property that ordinarily appreciates in value over time.

"substantial renovation" A building that is substantially renovated, and, after the renovation, is, or forms part of, a residential complex, is treated as a new residential complex for purposes of the GST. A substantially renovated building is subject to GST under the same rules and conditions as a newly constructed residential complex. For these purposes, a substantial renovation of a building is one in which all or substantially all of the building, other than the foundation, exterior walls, interior supporting walls, floors, roof and staircases, has been removed or replaced.

"supplier" A supplier is the person who makes a supply.

"supply" Supply is an important term in the context of the GST. It is intended to cover any arrangement where property is transferred, rented or leased, or where any service is rendered (otherwise than a service rendered by an employee to an employer). Under section 133, where a supply is provided pursuant to an agreement, entering into the agreement is treated as a supply and the transfer of the property or provision of services pursuant to the agreement is treated as being part of that supply. Section 134 treats the transfer of property or an interest in property not to be a supply if the transfer is to a lender pursuant to a security interest in the property.

Supplies made in Canada fall within the scope of the GST and are classified as being either taxable, exempt or zero-rated. Sections 142 to 144 set out the rules for determining the circumstances in which supplies are treated as being made in Canada.

"taxable supply" A taxable supply is a supply made in the course of a commercial activity and includes any supply other than an exempt supply. Technically, the term, "taxable supply" includes a zero-rated supply; that is, a supply listed in Schedule VII to which a tax rate of zero per cent applies.

"tax fraction" The tax fraction provides a method for calculating the tax charged in those cases where the value of a supply is expressed as a tax-included amount. Where, for example, a tax-included price is $321, given a tax rate of 7%, the tax included in the price is $321 x 7/107ths, or $21. The tax fraction is not relevant where GST is charged on a tax-extra basis.

"used tangible personal property" This definition provides rules for determining when goods are considered to be used property. It also sets out the rules for determining when "specified tangible personal property" (such as works of art, jewelry, stamps and coins) is regarded as used for the purposes of section 176 which deals with transactions involving used property. Specified tangible personal property is not considered to be used, and therefore is not subject to tax under subsection 176(2), where it has remained in the hands of dealers as inventory since it was last imported into Canada, since January 1, 1991 or, in the case of artwork, since it was first sold by the original artist.

"zero-rated supply" A zero-rated supply is a supply of property or service included in Schedule VII to the legislation and to which a tax rate of zero per cent applies. A zero-rated supply is a taxable supply. Accordingly, persons who are registered and make zero-rated supplies are able to claim input tax credits for any GST on purchases relating to the making of zero-rated supplies. This ensures that all GST is fully removed from zero-rated supplies. Zero-rated supplies include supplies of prescription drugs, medical devices, basic groceries, agricultural and fishery products, exports and international transportation services.

Subsections 123(2) and (3) Meaning of "Canada"

For purposes of the GST, the definition of Canada is similar to that in section 255 of the Income Tax Act, except in relation to importations of goods into Canada. The definition of Canada for purposes of Division III of the legislation, which deals with goods imported into Canada, has the meaning assigned by the Customs Act.

Subsection 123(4) Application of provisions to schedules

The provisions of Part IX also apply to Schedules V, VI and VII.

Section 124 Compound interest

Part IX requires the payment of interest at a prescribed rate on late and deficient payments of tax and on tax refunds. Section 124 provides that interest calculated at a prescribed rate and any penalty calculated at a rate per year is to be compounded daily. The prescribed rate of interest is to be the same as that provided for interest on late tax payments and refunds under the Income Tax Act. It will be determined by reference to the rate charged on 90-day Treasury Bills and adjusted quarterly.

Section 125 Negative amounts

This section states that negative amounts determined under algebraic formulae that are set out in a number of provisions are considered to be nil unless otherwise provided.

Relationships, Associations, Separate Persons and Residence

Section 126 Relationship

This section sets out the definitions of arm's length, related persons and associated persons.

"Arm's length"

Subsection 126(1) provides that related persons are to be treated as not dealing at arm's length with each other. It also provides that, at a particular time, it is a question of fact whether unrelated persons are dealing at arm's length. This subsection parallels subsection 251(1) of the Income Tax Act.

The definition of arm's length is particularly relevant to section 155. That section provides that the value of the consideration for a supply made between persons not dealing at arm's length is the fair market value of the supply (as it would be if the persons were dealing at arm's length) in those circumstances where the recipient is not acquiring the supply for use exclusively in a commercial activity.

"Related persons"

Subsection 126(2) provides that persons are related to each other for GST purposes if, at a particular time, they are considered to be related persons pursuant to subsections 251(2) to (6) of the Income Tax Act for purposes of that Act.

Section 127 Associated persons

The rules relating to associated persons are relevant principally for the purposes of the definition of small supplier in section 148 and the rules in Division V for determining whether a person is entitled to file GST returns on a quarterly or annual basis rather than on a monthly basis. Eligibility for filing on a quarterly or annual basis in any year is determined by reference to the total taxable supplies made by a registrant and by persons associated with the registrant.

Subsection 127(1) provides that a particular corporation is associated with another corporation for GST purposes if they are considered to be associated pursuant to subsections 256(1) to (6) of the Income Tax Act.

Subsection 127(2) provides that a person (other than a corporation) is associated with a particular corporation if that person or a group of associated persons of which the person is a member controls the corporation.

Subsection 127(3) sets out the circumstances in which a person will be treated as being associated with a partnership and with a trust.

Subsection 127(4) states that a person is associated with another person if both persons are associated with a third person.

Section 128 Closely related corporation

Section 128 sets out the definition of closely related corporation. This definition is relevant for sections 150 and 156 which provide an election to effectively exempt or zero-rate certain transactions between two members of a closely related group. Basically, two corporations are considered to be closely related if they are registrants and residents in Canada and if there is a degree of common ownership of at least 90 per cent.

Paragraph 128(1)(a) states that two GST-registered corporations resident in Canada are considered to be closely related to each other if at least 90 per cent of the value and number of full voting right shares of the capital stock of the second corporation are owned by:

- the first corporation;
- a qualifying subsidiary (as defined in section 123) of the first corporation;
- a parent of the first corporation (i.e. a corporation owing at least 90 per cent of the value and number of full voting right shares of the first corporation);
- any combination of the above corporations (e.g., if A owns 65% of C and 100% of B, and B owns 35% of C, then A, B and C are closely related to each other); or
- a person or a group of up to five persons who own at least 90 percent of the value and number of the full voting right shares of the first corporation. (e.g. if a person owns 90% of A and also 90% of B, then A and B are closely related).

Paragraph 128(1)(b) provides that certain corporations can be prescribed by regulation as being closely related.

In addition, section 128 states that a non-resident insurer with a permanent establishment in Canada is considered, for purposes of the definition of "closely related", as resident in Canada. As a result, the Canadian permanent establishment and another Canadian corporation that is closely related to the non-resident insurance company would be eligible to file an election to effectively exempt transactions between them under section 150. However, the exemption provided in section 150 does not extend to imported services. Therefore, any services provided by a non-resident insurance company to a Canadian subsidiary would not qualify for exemption under this rule.

Subsection 128(2) provides that where two corporations are closely related to the same corporation (which could be a resident or non-resident corporation), these two corporations are considered to be closely related to each other.

Section 129   Branches of public services bodies

Subsection 129(1) provides that a public service body engaged in one or more activities in separate branches or divisions may apply to have any such branch or division treated as though it were a separate person from, and not associated with, any other branch or division for the purposes of the small supplier rules. As a result, each separate division may be eligible for the small traders' exemption if the total taxable supplies made through that division do not exceed $30,000 annually. However the "separate person" status does not affect the treatment of transfers of property or services between the separate divisions of the organization -- these transfers are not considered to be taxable supplies. "Public service body" is defined in Section 123 to mean a charity, non-profit organization, hospital authority, municipality and certain educational institutions.

Subsection 129(2) provides Ministerial authority to approve an application under subsection (1) as long as the applicant can demonstrate suitable separate identification and record-keeping of the branches or divisions in respect of which the application is made.

Subsections 129(3) and (4) provide for revocation of the approval granted under subsection (2) where the applicant no longer meets the required conditions. Upon revocation, the separate person status is voided.

Section 130   Unincorporated organizations

Like corporations, many unincorporated organizations are comprised of two or more separate divisions. However, because they are not incorporated as one legal entity, in the absence of special rules, the various unincorporated divisions could each qualify as a separate person for GST purposes. As separate persons, they would have to register separately and any transfers of property or services between them would be treated as regular supplies which, in many cases, would be taxable.

Subsection 130(1) permits two such unincorporated bodies that are in fact functioning as part of one organization to jointly apply to the Minister of National Revenue to have one of the bodies recognized as a branch of the other. As a result, GST would not apply to transfers of property or services between the two bodies. Also, it would be clear that the responsible members of each body (as identified under section 324) would be jointly and severally liable for all obligations under Part IX of the Act resulting from the activities of either division. It should be noted as well that the "single person" status approved under this section does not preclude the organizations from taking advantage of the rules under section 129 that permit separately identifiable divisions to be treated as though they were separate persons for purposes of the small supplier rules.

Subsection 130(2) provides for Ministerial approval of an application made under subsection (1) by two unincorporated bodies where the Minister is satisfied that it is appropriate to recognize the two applicants as being one person for purposes of the GST. In determining whether the two are in fact functioning as part of a single organization, important considerations would be whether the two bodies have the same or very similar objects, whether there is a degree of accountability on the part of the branch or division toward the main body, and whether they have the same tax status under the GST. For example, two associations, one of which is eligible for registered charity status and the other is not, would not qualify for treatment as divisions of the same organization.

Subsection 130(3) and (4) provide for revocation of the approval granted under subsection (2) to two unincorporated bodies at the request of either party. Upon revocation, the two bodies revert back to being treated as separate persons.

Section 131 Segregated Fund

A segregated fund represents a separate fund maintained by an insurance company on behalf of other persons. Under the GST, as under the Income Tax Act, any such fund is treated as a separate person that is a trust of which the insurer is a trustee. As a consequence, any charges to the fund by the insurer for administration and other services are treated as supplies and, except for financial services and other exempt supplies, are taxable.

Section 132 Person resident in Canada

The residence of a supplier or recipient of a supply is important for a number of provisions in the Act. For example, with certain exceptions, supplies made by non-residents in Canada are considered to be made outside Canada under section 143. As such, they are beyond the scope of the GST. Similarly, certain supplies are zero-rated in Part V of Schedule VI as exports on condition that they are supplied to non-residents.

Section 132 deals with the question of residence for GST purposes. The determination of residential status ordinarily depends on criteria established by jurisprudence that has developed over the years. However, section 132 sets out certain special rules for particular circumstances.

Subsection 132(1) Corporations, partnerships and other organizations.

Under this subsection, a corporation is treated as being a resident in Canada if it is incorporated or continued in Canada and not continued elsewhere. A partnership or other unincorporated body is resident in Canada where a majority of its members having management and control are resident in Canada. A labour union carrying on union activities in Canada and having a local union or branch in Canada is also considered to be resident in Canada under this subsection.

Subsections 132(2), (3) Permanent establishment.

A non-resident person who has a permanent establishment in Canada is considered under subsection 132(2) to be resident in Canada, but only in respect of the person's activities carried on through that establishment.

Subsection 132(3) sets out the corresponding rule for a resident with a permanent establishment outside Canada. In this case, the resident is considered to be a non-resident in respect of those activities carried on through a foreign permanent establishment.

The definition of permanent establishment is set out in subsection 123(1) and includes any premises, facility or installation of a person (to the extent it is not purely temporary in nature) through which that person makes supplies. It also includes a fixed place of business of an agent of a person (other than an independent agent) through whom that person makes supplies in the ordinary course of business.

Subsection 132(4) Supplies between permanent establishments

Subsection 132(4) provides that a supply of personal property or service made by a person from a permanent establishment in Canada to a permanent establishment of the person outside Canada is to be treated as a supply made at arm's length between separate persons.

Supplies

Section 133 Agreement as supply

Under this section, the entering into of an agreement to supply any property or service will be treated as a supply of the property or service, made at the time the agreement is entered into. As a consequence, GST applies to any prepayment or part payment of the consideration for a supply even if, at the time payment is made, property has not in fact been transferred or the service has not yet been rendered. In these circumstances, paragraph 133(b) treats the actual provision of the property or service under the agreement as being a part of the same supply and not as a separate supply.

Section 134 Transfer of security interest

This section provides that, where there is an agreement relating to any indebtedness, the transfer of property pursuant to a security arrangement to secure payment of the debt is not treated as a supply. Furthermore, where, upon payment or forgiveness of the debt or obligation or any other circumstance, the property or title thereto is restored to the original owner, such transfer also is not considered to be a supply.

This provision applies, for example, in the case where the purchase of land is financed under a mortgage agreement. In some jurisdictions, under a mortgage agreement, the purchaser retains beneficial ownership of the land, even though legal ownership of the land may be transferred to the lender and, when the mortgage is discharged, legal ownership reverts to the purchaser. Section 134 ensures that the transfers of legal ownership between a mortgagor and a mortgagee in this case are not subject to GST.

Section 135 Sponsorship of public service activities

Where a charity or other a public service body receives a sponsorship from a business in return for which the body undertakes to provide a promotional service or the right to use its logo or similar property, the provision of the service or right is not subject to GST. In effect, these types of sponsorships are treated under section 135 in the same way as the receipt of a grant or subsidy. For example, a non-profit hockey club might agree to advertise on its team uniforms the tradename of a corporate sponsor. As another example, a corporation might provide funding to an Olympic association and receive, in return, the right to use the Olympic logo. In both cases, GST would not apply to the transactions. However, where a payment by a sponsor may reasonably be regarded as being primarily for advertising on a radio or television or in a newspaper, magazine or periodical, the supply of that advertising service by the public service body is treated as a taxable supply.

Subsection 136(1) Lease, etc., of property

This subsection provides that a lease, licence, rental or similar arrangement for the use of or right to use real property or tangible personal property is treated as a supply of the underlying property. In the absence of this rule, such supplies, being of rights, might be considered as supplies of intangible property. The nature of a supply is particularly important for the purpose of the rules for timing of liability for GST, as well as liability for imports of intangible property.

Subsection 136(2), (3) Combined supply of real property

Subsection (2) provides that, where a supply of real property includes a residential complex and other real property, the provision of the complex is treated as a separate supply. For example, in the case of an apartment tower with a first-floor shopping mall, the mall and the apartments are considered to be separate buildings for GST purposes. This ensures that the rules applying to residential complex apply to a residential complexes attached to other non-residential real property. Subsection (3) provides that where the owner of a multiple unit residential complex is a builder of an addition to complex (e.g. a new wing) and on completion sells the entire complex, the sale of the existing part of the complex is still considered to be an exempt supply. However, the new and unused addition is to be treated as a separate supply and taxed accordingly. This ensures that tax is payable on the fair market value of the addition where the builder has not paid tax at an earlier time under the self-supply rules (subsection 191(4)).

Section 137 Coverings and containers

This section provides that where a covering or container that is used to supply tangible personal property of a particular class is a covering or container which is usual for such a supply, the covering or container shall be treated as part of the property so supplied.

Section 138 Incidental supplies

This section provides that a supply that is incidental to another supply is treated as part of that other supply. This rule applies where the primary and incidental supplies are provided together for a single consideration. However, it does not apply where a separately identifiable charge is made for the incidental supply. This provision is intended to avoid the need to prorate consideration received for a supply where the potential tax status of an incidental supply differs from the primary supply to which it relates. For example, if a box of cereal (a zero-rated grocery) includes a small toy in the box, the incidental supply rule ensures that tax does not apply to that portion of the price relating to the toy. Similarly, if a residential landlord includes electricity in the rents charged to tenants, section 138 ensures that the landlord does not have to charge GST on the portion of the rent relating to the supply of the electricity. Section 139 deals with the specific case of a mixture of items supplied for one price where the supply is primarily of exempt financial services.

Section 139 Financial services in mixed supply

Section 139 is similar to section 138 in that it is intended to avoid prorating a single consideration that covers several supplies. However, it applies only where a supply of a financial service is made together with a non-financial supply for a single consideration. For example, an all-inclusive bank service charge may entitle the account holder to receive personalized cheques (a non-financial service) in addition to a range of financial services. Under these circumstances, the supply of all of the services and properties is treated as a supply of financial services if more than 50% of the consideration represents consideration for financial services. Thus, under section 139, the bank is not required to identify a separate charge for the cheques and collect GST on that charge -- the entire bank service charge is treated as an exempt supply.

Section 140 Supply of membership with share, etc.

Memberships in clubs or associations are sometimes acquired by purchasing a share, bond, debenture or other security issued by the owners of the club or the association. Similarly, initiation fees charged to persons wishing to obtain a membership in a club may be paid through purchasing securities issued by the club owners. In these cases, the investment in the security is treated as a sale of the membership or the right to obtain a membership and will therefore constitute a taxable supply (and not an exempt financial service) even though it involves the provision of a financial instrument. However, this rule does not apply to the purchase of memberships in a credit union. Thus, where a person opens an account at a credit union and so obtains a membership in the credit union, this will be treated as a supply of an exempt financial service.

Section 141 Use in commercial activities

The purpose of this section is to reduce the number of instances where registrants might otherwise be required, for the purposes of determining an input tax credit, to apportion the input tax paid in respect of supplies received between commercial and other activities. It provides that, where substantially all of the use or intended use of a property or service is in a commercial activity, the property or service is treated as being used (or for use) wholly in a commercial activity. Conversely, where substantially all of the use or intended use of a property or service is in a non-commercial activity (such as in rendering health care services or the making of other exempt supplies), then the property or service is wholly attributed to that activity.

"Substantially all" generally means 90% or more. Thus, for example, if a property is acquired for use 90% in a commercial activity and 10% for use in any other activity (say, in the provision of exempt day care services), the property is to be considered as being used entirely in commercial activities. As a consequence, no part of the GST on the consideration payable for the property needs to be apportioned to the exempt activities, and the entire tax paid on acquisition qualifies for an input tax credit.

The rules described above are contained in subsections 141(1) to (4). These rules do not apply to financial institutions. As well, subsection 141(1) provides that where real property is partly residential and partly non-residential, subsections 141(1) to (4) apply in respect of property or services supplied in relation to the real property only to the extent that the property or service is acquired for use in relation to the non-residential part of the real property. For example, if a landlord of a 10 storey apartment building, the first floor of which consists of retail shops, pays for electricity for the entire building, the portion of that expense attributable to the first floor would not be treated as having been incurred for use in supplying exempt residential rents, even though 90 per cent of the building is used for that purpose. Therefore, the landlord would be able to claim input tax credits for the portion of the expenses attributable to the taxable rentals on the first floor.

Subsection 141(5) provides that any activity involved in starting or winding up a commercial activity that is a business or adventure or concern in the nature of trade is part of that business, adventure or concern. As a result, GST paid on purchases made during the start-up or winding-up phase of a commercial business may be claimed as input tax credits. For example, taxable expenses associated with obtaining legal, accounting, marketing or other professional advice in relation to the acquisition of a commercial activity would qualify for input tax credits. Similarly, any supplies made in the course of winding-up a business, adventure or concern that is a commercial activity (such as the sale of business assets as the business is being wound down) are treated as supplies made in the course of that activity.

Place of Supply

Section 142 Place of supply -- general rule

A supply made in Canada is either an exempt supply or a taxable (including a zero-rated) supply. A supply made outside Canada is beyond the scope of the GST. Subsection 142(1) sets out the general rules for determining when a supply is made in Canada.

A sale of goods is considered to be a supply made in Canada if the goods are, or are to be, delivered or made available in Canada to the recipient of the supply. A supply of goods other than by way of sale, such as a lease of the goods, is considered to be made in Canada if possession of the goods is given or made available in Canada to the recipient.

With respect to a supply of intangible personal property (such as intellectual property), if the property is to be used in whole or in part in Canada and the recipient is resident in Canada or is registered to collect GST, the supply is treated as having been made in Canada. As well, a supply of intangible personal property that relates to real property situated in Canada, goods ordinarily situated in Canada, or to a service to be performed in Canada, is treated as having been made in Canada.

A supply by way of a sale or lease of real property that is situated in Canada, as well as any supply of architectural or other services relating to real property situated in Canada, is considered to be made in Canada.

The supply of a telecommunication service is considered to be made in Canada if the billing for that service is issued in respect of a terminal or transmitting/receiving facility ordinarily situated in Canada.

Paragraph 142(1)(g) is a provision of general application that treats any other service as being a supply made in Canada if the service is, or is to be, performed in whole or in part in Canada.

Subsection 142(2) sets out the converse rules for determining when sales are treated as being made outside Canada and thus beyond the scope of the GST.

Section 143 Supply by non-resident

Notwithstanding the general rules for a supply made in Canada outlined in section 142, subsection 143(1) provides that (except for the three cases described below) the supply of personal property or service made by a non-resident person is considered to be a supply made outside Canada (and thus not subject to GST). Implicit in this provision is the fact that a supply by a non-resident of real property situated in Canada is subject to the normal GST rules. The three exceptions are outlined in paragraphs 143(1)(a), (b) and (c).

Paragraph (a) provides that if the non-resident person makes a supply of property or service in Canada in the course of a business carried on in Canada, the supply is to be treated as being made in Canada and, therefore, subject to GST in the normal manner. As a consequence, the supply (if it is not an exempt supply) is subject to the GST (unless, of course, the non-resident otherwise qualifies as a small supplier). Special note should be made of the fact that subsection 240(4) considers a non-resident person to be carrying on business in Canada where the person, in Canada, solicits orders for, or offers for sale, property that is valued at no more than $40 and is to be delivered by mail or courier to customers in Canada.

Paragraph (b) provides that, where a supply made in Canada is made by a non-resident who is a GST registrant, the exception does not apply, and the supply is to be treated as a supply made in Canada. It should be noted that a non-resident person that does not carry on business in Canada may nevertheless apply, under subsection 240(3), to be a GST registrant if the person regularly solicits orders for goods to be supplied by the person and delivered in Canada.

Paragraph (c) deals with the situation of a non-resident person who provides or stages a performance, exhibit, activity or event in Canada and charges admission or attendance fees directly to spectators or attendees. In this situation, the supply is treated as a supply made in

Canada and the non-resident person is required to collect the tax on the consideration and remit it to the Receiver General. It should be noted that this rule does not apply to an admission that the non-resident person acquires and re-supplies. Thus, for example, if a non-resident tour operator that does not carry on business in Canada purchases admissions to attractions in Canada for inclusion in a tour package, the re-supply of those admissions on the sale of the package to non-residents would not be considered a supply made in Canada. Paragraph (c) should be read in conjunction with subsection 148(3) relating to the definition of a small supplier and subsections 238(3) and 240(2) which set out special rules for the filing of returns and registration requirements in the case of non-resident performers who charge admission or attendance fees directly to spectators or attendees.

Subsection 143(2) ties into subsection 240(4) which, as noted above, treats non-residents who solicit orders for prescribed goods to be delivered by mail or courier to persons in Canada to be carrying on business in Canada. Because GST only applies to supplies made in Canada, subsection 143(2) states that such goods, when mailed or couriered to Canada, are considered to be supplies made in Canada. The combined effect of subsections 143(2) and 240(4), then, is to require non-resident businesses such as magazine, book and periodical publishers to account for GST on their subscription sales in Canada on the same basis as domestic publishers.

Section 144 Supply before release

Goods imported into Canada but held "in bond" under the control of Canada Customs may be so held without payment of applicable customs duties and federal taxes until the goods are released by Customs. If the goods are sold while still in bond, the sale is treated under section 144 to be a supply made outside Canada and, therefore, not subject to GST. Under Division III of Part IX, GST becomes payable by the person who obtains release of the goods from Canada Customs for consumption, use or resale in Canada. In other words, GST on goods imported into Canada is imposed at the same time as customs duties apply (or would apply if the goods were dutiable).

Commercial Activities

Section 145 Partnerships

This section provides that any commercial activity engaged in by a person in that person's capacity as a member of a partnership is treated as a commercial activity of the partnership rather than the member. As a consequence, partners are not required to register separately for GST purposes. Section 253 provides that a rebate of tax may be claimed by an individual who is a member of a partnership in respect of the GST paid on certain expenses (including capital cost allowance on an automobile) that are deductible under the Income Tax Act in calculating the individual's income from the partnership.

A corporation that is a member of a partnership and is registered for GST purposes is treated as being engaged in a commercial activity of the partnership with respect to expenses that are incurred (i.e., supplies received) outside the partnership but that relate to the partnership activity. As a result, a corporate partner is allowed to claim an input tax credit on its own GST return for the tax payable by it on its purchases relating to commercial activities of the partnership where the partnership itself would not otherwise be entitled to claim the input tax credit since the expenses were not expenses of the partnership.

Section 146 Supplies by governments and municipalities

Many supplies made by governments and municipalities are exempt. However, to the extent that supplies are made in the course of commercial activities, they are subject to the same general rules that apply to the private sector. In order to provide greater certainty, in this section, a number of supplies (other than exempt supplies as set out in Schedule V to the Act) are specifically identified as being made in the course of a commercial activity when the supply is made by a government or municipality (including their emanations). These supplies, which include certain testing and inspection fees, as well as recreational hunting (or trapping) and fishing licences are listed in paragraphs (a) to (e). As a result, GST is collectible on such supplies and the normal rules respecting input tax credit entitlements apply. These provisions do not imply that other commercial activities of governments and municipalities (e.g., sales in a retail establishment) are not to be treated as commercial activities for purposes of the GST.

Section 147 Method of determining use

This section provides that, for the purpose of claiming input tax credits, a registrant shall allocate inputs to supplies using a method, or methods, that are fair and reasonable in the circumstances. The legislation allows flexibility in the choice of methods as long as they are fair and reasonable. However, once a registrant adopts a method in a fiscal year, it is to be used at least until the end of that year, or until it becomes unreasonable.

Small Suppliers

Section 148 Small supplier status

This section sets out the rules for determining the status of a person as a "small supplier" for GST purposes. A small supplier is not required to collect tax on taxable supplies. Nor is a small supplier entitled to claim an input tax credit for tax paid on taxable inputs.

It is important to note that a person qualifying as a small supplier may elect to become a GST registrant. A small supplier who registers is of course required to collect tax on any taxable supplies. However, it is to the advantage of small suppliers selling to other businesses to register as this allows the small supplier to obtain input tax credits on purchases and the supplier's business customers will ordinarily be entitled to claim input tax credits for any tax they pay.

A person is not required to apply for status as a small supplier. Moreover, unless a small supplier applies for registration, there is no requirement to file any GST returns in respect of the commercial activity.

Pursuant to subsection 148(1), a person qualifies as a small supplier throughout any calendar quarter and the following month if the total consideration for taxable supplies made by the person in the preceding 12-month period did not exceed $30,000. For the purpose of this rule:

- the $30,000 threshold is determined by reference to the total consideration for taxable supplies, excluding the proceeds from any sales of capital property, made in that 12-month period;

- the threshold is determined by reference to the aggregate of the taxable supplies made by the person and any associated person in that period ("associated person" is defined in section 127); and

- persons carrying on lotteries or gambling activities are entitled to deduct certain prizes or winnings paid out to determine whether they are below the $30,000 threshold. This provision is of particular relevance for charities and non-profit organizations.

Subsection 148(2) provides an exception to the rule described above. Under this subsection, a person ceases to qualify as a small supplier at any time in a calendar quarter when the total consideration for taxable supplies of that person and of associated persons in that quarter exceeds $30,000. For the purposes of this rule, proceeds from the sale of capital property are excluded. When the threshold is exceeded, the person ceases to qualify as a small supplier. As a result, the person is required to become registered and collect tax on all supplies, other than exempt supplies, made in the course of any commercial activities.

Subsection 148(3) denies "small supplier" status to a non-resident person whose only business carried on in Canada is the selling of admissions to a place of amusement, seminar, activity or event. The effect is to require non-residents in such circumstances to collect and remit tax on admissions which they sell directly to spectators/attendees even if the aggregate value of admissions charged does not exceed the $30,000 threshold.

Financial Institutions

Section 149

This section sets out the rules for determining which persons are considered to be a financial institution for purposes of the GST. It also sets out the rules for amalgamation and acquisitions where a financial institution is involved.

Subsection 149(1), (4) Financial Institutions

Financial institutions are subject to different rules than other persons, especially in determining input tax credits. A financial institution can only claim a credit to the extent an input is used in making a taxable supply. Registrants not described in paragraph 149(1)(a) or 149(1)(b) are able to claim full input tax credits for their purchases used in the provision of both taxable supplies and financial services that relate to their commercial activities. In addition, a financial institution treats capital personal property having a value greater than $50,000 under the same rules that apply to capital real property, so that input tax credits are based on the proportion of use in commercial activities. For other registrants, the tax on purchases of capital personal property will qualify for full input tax credits where the property is used *primarily* in commercial activities.

Paragraph 149(1)(a) describes those persons who are considered to be "listed financial institutions" (see definition in section 123). The definition of a listed financial institution is relevant mainly for the purposes of determining the availability of the intra-group election contained in section 150. Basically, a person is a listed financial institution if at any time during the year the person is a bank, an investment dealer, a trust company, an insurance company, a credit union, an investment plan, a tax discounter, or a corporation whose principal business is the lending of money or providing insurance. In addition, any corporation that is a member of a closely related group that has made an election under section 150 to treat its intra-group transactions as exempt is considered to be a listed financial institution.

Paragraph 149(1)(b) provides that a person is also a financial institution if the person provides a significant amount of financial services during the immediately preceding taxation year (that is, the taxation year for purposes of the Income Tax Act). These persons are not included within the definition of a listed financial institution. A *de minimis* test is used to determine where a significant amount of financial services are provided. For the purpose of the *de minimis* test, a firm must calculate the amount of interest and dividends included in computing its income (or, in the case of an individual, the person's business income), as well as fees charged separately for financial services during the preceding tax year. Interest and dividend income are computed on the same basis as for income tax purposes. A registrant is considered to be a financial institution if this income (i.e. "income from financial services") for the preceding year exceeds 10 per cent of the registrant's "total income" computed as the sum of the interest, dividend and fee income and consideration for most other supplies. A registrant is also considered to be a financial institution if its "income from financial services" described above exceeds $10 million in the preceding year (determined on a prorated basis for short taxation years).

Subsection 149(4), provides that interest and dividend income from related companies is not included in a person's "income from financial services" for the purpose of this test unless the income represents income from a business of the person. However, all interest and dividend income is included in the person's "total income". As a result of this subsection, holding companies that are solely holding shares and indebtedness of operating subsidiaries are not considered to be financial institutions.

Subsection 149(2) Amalgamation

Subsection 149(2) defines the status of a new corporation created by a merger or amalgamation involving one or more financial institutions. If the principal business of the new corporation is the same as, or similar to, the business of one or more of the predecessors that was a financial institution, then the new corporation is considered to be a financial institution for its taxation year that commences on the merger or amalgamation. This rule ensures that the new corporation is subject to the rules for financial institutions.

Subsection 149(3) Acquisition of Business

Subsection 149(3) provides a similar rule where a person purchases the business of a financial institution. In this case, the purchaser is considered to be a financial institution for the remainder of the taxation year if the acquired business is a financial business and is continued as its principal business after the purchase. This rule applies even if the purchaser was not a financial institution prior to the purchase.

Subsection 149(5) Meaning of "investment plan"

This subsection defines "investment plan". This term is used in subsection 149(1)(a) to include a trust governed by a registered pension fund, a mutual fund and a registered retirement savings plan in the definition of financial institution. Also included are investment corporations, mortgage investment corporations and mutual fund corporations, all as defined for income tax purposes.

Section 150

This section deals with the treatment of transactions between any two members of a closely related group (as defined in sections 123 and 128) where at least one member of the group is a listed financial institution. The purpose of this rule is to provide roughly consistent treatment between services purchased by a financial institution from a closely related member and services provided in-house by employees of the financial institution. In addition, the section deals with the treatment of transactions between credit unions.

Subsection 150(1) Election for exempt supplies

Subsection 150(1) provides that two members of a closely related group can jointly elect to have all inter-company supplies of services or leases, which would otherwise be taxable, treated as exempt supplies. A service or lease imported by a Canadian company is not eligible for this exemption and, therefore, is treated as a taxable supply and subject to GST on a self-assessment basis under Division IV (sections 217 to 220 of the Act).

Subsection 150(2) Joint ventures

Subsection 150(2) provides that the treatment of intra-group transactions as supplies of financial services is not applicable to leases of property, or services rendered, by a member of a closely related group in the member's capacity as a participant in a joint venture with another person where the two persons have elected, under section 273, to effectively account for the operations of the joint venture at the operator level. In the absence of this rule, an unrelated person who would otherwise have to charge GST on taxable supplies made to members of a related group could effectively convert taxable supplies of services and leases of property into exempt supplies by entering into a joint venture with one member of the group who, if designated the operator of the venture, would be treated as making the supplies of the unrelated person.

Subsection 150(3) Form and manner of filing

This subsection requires that the election referred to in subsection 150(1) be made in a prescribed form and be filed by the member with the Minister on or before the day its return for the reporting period in which the election is to become effective is required to be filed.

Subsection 150(4) Effect of election

Subsection 150(4) requires that an election between two members continues to be effective until:

- one of the members ceases to be a member of the closely related group;
- the closely related group no longer includes a listed financial institution other than a person deemed under section 151 to be a listed financial institution; or
- the members jointly revoke the election (although, it should be noted that a revocation is not allowed until at least one year after the election becomes effective).

Subsection 150(5) Subsequent elections

Subsection 150(5) specifies that, once an election ceases to be effective, the permission of the Minister is required in order for the persons to re-qualify for the exemption of transactions between members of a closely related group.

Subsection 150(6) Credit Unions deemed to have elected

This subsection provides that all supplies, other than supplies of capital property, are treated as financial services when supplied between two credit unions. This effectively exempts most charges within the credit union network.

Furthermore, this subsection allows a credit union that qualifies as a small supplier to be defined as a closely related member of a group and to be treated as having made an election under subsection 150(1) without having to actually register for GST purposes.

Section 151 Effect of election under subsection 150(1)

This section provides that when an election under subsection 150(1) has been made, the member is considered to be a financial institution even if that corporation does not satisfy the financial institution definition contained in paragraph 149(1)(b). Furthermore, section 149(1)(a) defines these persons as listed financial institutions. Therefore, as long as the election is effective, the rules specifically applicable to listed financial institutions, such as the capital property rules, are relevant.

Consideration

Section 152 When consideration due

Subsection 152(1) establishes the time at which the consideration for a taxable supply becomes due. This time is relevant to a number of sections; in particular, to subsection 168(1) which specifies that GST becomes payable by a recipient of a supply on the day on which the consideration for the supply is paid or becomes due, whichever is earlier. A number of special cases are dealt with in subsections 168(2) through 168(9). However, subsection 152(1) states the general rule that the time at which consideration for a supply becomes due is the earliest of:

- the day actual payment for the supply is made;
- the day of issuance of the supplier's invoice or the date of that invoice, whichever is the earlier;
- the day on which, but for an undue delay in the issuance of the invoice by the supplier, the invoice would have been issued (this rule is similar to that in paragraph 12(1)(b) of the Income Tax Act); and
- the day on which, under a written agreement, the recipient is required to give the consideration or part thereof to the supplier for the supply.

Subsection 152(2) provides that, where property is supplied under a written lease agreement, tax becomes payable on the lease payments as they fall due under that agreement, notwithstanding the fact that an invoice or notice of payment may be issued to the lessee in advance of that date.

Pursuant to subsection 152(3), an item traded in a barter transaction is treated as payment for an item received in return.

Section 153 Value of consideration

The GST is determined by reference to the value of the consideration for a taxable supply. Generally, the value of the consideration for a supply is expressed in money. Paragraph 153(1)(b) provides that where the consideration, or part, is property and not money (as would be the case in a barter transaction), its value is the fair market value of the property determined at the time of the supply.

Subsection 153(2) is an anti-avoidance rule that applies where there has been an unreasonable apportionment of the consideration for two or more supplies or for supplies and some other obligation. This subsection requires a reasonable attribution of the total amount of consideration as between the separate billings or charges.

Subsection 153(3) provides that in the case of an exchange of like property between two registrants each of which is acquiring the property as inventory for use exclusively in commercial activities, the registrants do not have to calculate and collect GST on the value of the property exchanged. Such product-for-product exchanges are common among dealers in certain industries, such as the up-stream oil and gas industry. This provision avoids the need for fair market valuations and issuing of invoices in these circumstances.

Section 154 Federal and provincial taxes

Section 154 deals with the treatment of federal and provincial taxes, duties and fees. The consideration for a supply includes any tax, duty or fee (other than any such amount that may be prescribed) imposed on the supplier or recipient of the supply under any other Act of Parliament or the legislature of a province. Examples of included taxes and duties imposed under federal law are customs duties, excise duties imposed by the Excise Act and the air transportation tax and excise taxes (other than the GST) imposed by the Excise Tax Act. The GST is expressly excluded from the determination of the amount of consideration for any supply. The provincial taxes to be prescribed (i.e., those excluded from the GST base) include general retail sales taxes and sales taxes imposed on specific products in lieu of the general retail sales tax at a rate not exceeding the greater of 12 per cent or the general sales tax rate plus 4 percentage points.

Section 155 Non-arm's length supplies

This section provides an anti-avoidance rule in the circumstances where a person transfers property or a service for less than fair market value or for no consideration in a non-arm's length transaction to a person who is a non-registrant or is a person who will use, consume or resupply the property or service in the making of an exempt supply. Section 155 provides that, under these circumstances, tax is to be calculated by reference to the fair market value of the supply. This rule does not apply where the supply is between two non-arm's length parties, the recipient is a registrant and the supply is for use by the recipient exclusively in the course of a commercial activity.

Section 156 Election for nil consideration

Where a corporation is organized into separate branches or divisions, any transfer of property or services between those branches or divisions has no GST consequences. Alternatively, the corporation might establish a wholly-owned subsidiary or a closely related special-purpose corporation. In the absence of any special rules, transactions between the parent corporation and the closely related corporations would be treated in the same manner as transactions between unrelated companies. This could have different implications for the group of related corporations than if each had been a division of a single corporate entity. This section addresses this situation by effectively zero-rating supplies between two or more closely related corporations resident in Canada if the corporations are engaged exclusively in commercial activities (and, therefore, would be entitled to fully recover any GST paid on purchases from other members in any event). Section 128 sets out the rules for determining when a corporation is considered to be "closely related" to a second corporation.

To qualify for zero-rating of intra-group supplies between closely related corporations, the members to be included in the group are required to file a joint election to that effect. It should also be noted that sales of real property or any supply that is not acquired by the recipient exclusively for use in a commercial activity cannot qualify for zero-rating under this provision.

Separate rules for intra-group transactions involving financial institutions are provided in section 150.

Section 157 Coupons and gift certificates

Subsection 157(1) deals with the treatment of coupons issued for no consideration, such as those that permit a consumer to obtain a reduction on the price of a product. In this case, the consideration for the supply of the product is reduced by the coupon amount, with GST applying to the sale price net of the coupon amount. If, for example, a consumer presents a coupon that allows 50 cents off the price of shampoo retailing at $6.50, the consideration for the supply would be $6.00 and tax calculated on this amount would be 42 cents (7% of $6.00).

Subsection 157(2) deals with the sale of a gift certificate for consideration. The sale is not considered to be a supply and therefore will not attract GST. When the gift certificate is subsequently exchanged for goods or services, its redemption value is to be treated as part of the consideration for those goods or services.

Section 158 Tax refund discounts

This section sets out the rules for the treatment of income tax discounting services to which the Tax Rebate Discounting Act applies. This service involves customers assigning their rights to an income tax refund to a tax discounter in return for an immediate payment.

For GST purposes, tax discounters are treated as having made two supplies -- a taxable supply involving a service of preparing the tax return of the client and an exempt supply involving a financial service. The consideration for the taxable supply equals 2/3 of the difference between the tax refund and the amount paid by the discounter to the client, to a maximum of $30. The remainder of the fee charged by the discounter to the client is treated as consideration for the financial service.

In addition, tax discounters are considered to be listed financial institutions since they supply financial services as defined in section 123.

Section 159 Value in Canadian currency

This section deals with the situation where payment for a supply is expressed in foreign currency. In this case, for purposes of calculating any GST payable, the value of the consideration is determined by reference to the Canadian dollar equivalent on the date the consideration is payable. The section also permits the Minister to accept a different method of determining the exchange value of foreign currency. It is contemplated that a method would be acceptable where the exchange value is determined on the day the foreign currency was acquired or the date of payment where that method is reasonable and, in the case of a business, applied on a consistent basis.

Section 160 Coin-operated devices

Where both a supply and the payment of the consideration therefor are effected by way of a coin-operated device (such as a vending machine), the time at which the GST becomes collectible by the supplier is the day on which the consideration is removed from the device. In other words, from the supplier's point of view, the supply is considered to have been made only when money is removed from the device. From the point of view of the customer or recipient, the GST is considered to have been paid on the day the money is deposited into the device. Thus, for the purposes of remitting GST, the supplier is treated as having received the tax on the date the money is removed, but for the purpose of claiming an input tax credit, the recipient is treated as having paid the tax when the money was deposited.

Section 161 Early or late payments

Where the consideration is shown on an invoice for a supply of goods or services and the recipient may obtain a discount for prompt payment or is subject to a penalty for late payment, the value for tax is not affected by the discount or penalty. In both cases, GST applies to the amount of consideration shown on the invoice without regard to the discount or penalty. Thus, for example, if an invoice showed the price of goods as $100 (plus $7 of GST) and a 2% discount for prompt payment were offered, the GST would be $7 even if the discount were taken. Conversely, if there were a $5 penalty on late payment of an invoiced amount for $100, GST would be collectible only on the $100.

Section 162 Natural resource royalties

Under section 162, the provision of any right to explore for or exploit natural resources, the supply of a lease relating to such rights, or the supply of any right to a royalty or net profits interest in relation to the resource is considered not to be a supply for purposes of the GST. As a consequence, with the exceptions noted below, resource royalties are not subject to GST, whether paid to a government or to any other person who has granted rights to a resource property in respect of which the royalty is paid. Under this section, the supply of commercial fishing licences is treated as not a supply for GST purposes and therefore is not taxable.

There are exceptions to this rule where the payment is in respect of a right provided to a non-registrant, specifically:

- to a consumer for personal use or enjoyment (such as a recreational fishing licence); or
- to any person who is not registered and the right enables that person to acquire goods for resale to consumers (for example, a right to cut trees by a small supplier who, in turn, produces firewood for sale to customers).

Section 163 Tour packages

Section 163 sets out the rules for determining the consideration for the taxable portion of a tour package; that is, those services included in a tour package which, if purchased by a traveller directly (and not as part of a tour package), would be subject to the GST. A tour package is defined as one in which transportation, accommodation, meals and other travel services are provided at an all-inclusive price. The non-taxable portion of the consideration for a tour package falls within Schedule II and, therefore, is zero-rated. The non-taxable portion generally includes the costs relating to the international transportation and to accommodation and other supplies outside Canada -- in other words, those items that would be zero-rated if they were purchased separately by a traveller. However, the remaining part of the consideration paid or payable for a tour package, such as that relating to domestic transportation and accommodation and other supplies in Canada, are taxable.

Tour operators selling tours involving a combination of taxable and non-taxable travel services (e.g., a tour package to the U.S. involving taxable transborder air fare and non-taxable accommodation in the U.S.) are required to pro-rate their selling prices according to the value of the taxable and non-taxable components of the package. This proration is based on the relative cost of each of the travel service elements to the tour operator. For example, after claiming input tax credits for the tax on transborder air travel services, the operator's average net travel service costs per package sold might break down as follows:

	(dollars)	(per cent)
Round-trip flight from Toronto to U.S. (taxable)	200	40
Accommodation and sight-seeing in U.S. (non-taxable)	300	60
Total	500	100

Assuming, say, a 20 per cent margin, the operator's selling price would be $600. Because 40 per cent of the operator's input travel costs represent taxable services, GST at the rate of 7 per cent would be calculated on 40 per cent of the operator's selling price. In other words, the value of the consideration for the taxable portion of the tour package would be $240, on which $16.80 in GST would apply.

Prorating ordinarily is required only once in respect of any given tour package -- when it is first casted out. At that time, the person assembling the package (referred to in this section as the "first supplier") knows that the value for tax on all such packages sold is a fixed percentage (referred to as the "initial taxable percentage") of the selling price -- 40 per cent in the above example. As long as the mixture of input travel costs does not change significantly, the tour operator will continue to use this percentage to determine the value for tax of all such packages sold. Therefore, if, in the above example, the operator sells some packages for $550 (instead of $600), the GST on the lower-priced packages would apply to 40 per cent of $550, or $220. However, if the operator's input costs were to change such that the portion of the total selling price that was reasonably attributable to the taxable components increased or decreased by more than 10 percentage points (i.e.., to over 50 per cent or less than 30 per cent in the above example), all subsequent sales by the operator of such packages would be taxed on the basis of the re-calculated percentage.

Paragraph 163(1)(a) establishes the value for tax of a tour package sold by the first supplier of the package. In some cases, tour operators act as wholesalers and sell tour packages to retailers who, in turn, sell the packages to final consumers. Paragraph (b) provides that if such a retailer paid tax on, say, 40 per cent of the total price of the package, then the retailer would, in turn, charge his or her customer tax on 40 per cent of the price paid by the customer.

Section 164 Donations to charities and registered parties.

Section 164 provides that any amount which would qualify as a charitable donation or political contribution for income tax purposes is not treated as consideration for a supply. Hence GST does not apply to any portion of an amount paid to a charity that is a donation. If, for example, a person pays $100 for a fund-raising dinner and $75 represents a donation, the GST would apply only to 7/107ths (assuming tax-included pricing) of the remaining $25 that represents the cost of the dinner. In this example, the tax would be $1.64.

Division II

Goods and Services Tax

Subdivision a

Imposition of Tax

Section 165 Imposition of tax

Section 165 is the basic charging provision with respect to the GST on taxable supplies made in Canada. Under subsection 165(1), every recipient of a taxable supply made in Canada is, in respect of the supply, required to pay tax equal to 7 per cent of the consideration for the supply.

Where the supply is a zero-rated supply, subsection 165(2) provides that the rate of tax is 0 per cent. Zero-rated supplies of property and services are those enumerated in Schedule VI to the Act. The principal categories of zero-rated supplies are prescription drugs, medical devices, basic groceries, agricultural and fishery products, exports and international transportation.

Subsection 165(3) establishes special rates of tax for telephone services that are paid for by depositing money into a coin-operated phone. Pay telephone charges are regulated by a variety of federal and provincial bodies. So as not to interfere with regulated rates and rate-setting procedures, the GST on telephone calls paid in coin is a specific amount designed to approximate a 7 per cent ad valorem tax. The tax applies in 5¢ increments. Where the payment is less than 70 cents, the tax is "nil"; where the payment is 70 cents, the tax is 5¢; where the payment is 70 cents or more, the tax is 5¢ for every 70 cents deposited. Thus, where two dollars in coin is deposited in payment of a particular telephone call, the customer is treated as having paid, and the telephone company treated as having received, tax of 10 cents. This rule applies only where payment is made in coin. Pay telephone calls charged on telephone calling cards are subject to GST in the normal manner; that is, the 7 per cent ad valorem tax is payable and collectible on amounts charged to a calling card.

Subsection 165(4) provides that, where 7 per cent of the total consideration for all taxable (other than zero-rated) supplies included on an invoice is an amount that includes a fraction of a cent, the amount is to be rounded to the nearest cent (rounded up where the fraction is half a cent). For example, if the tax-excluded prices of two items appearing on an invoice are $2.51 and $3.50, for a total of $6.01, the total GST payable on those items would be 42 cents.

Section 166 Supply by small supplier not a registrant

This is the basic relieving provision for supplies by small suppliers. It provides that if, at the time the consideration is paid or becomes due for a supply, the person who made the supply was a small supplier (as determined under the rules in section 148), no tax is payable in respect of that supply on the consideration that is paid or became due when the person was neither registered nor required to be registered. This provision does not apply to sales by small suppliers of real property.

Section 167 Sale of a business

Subsection 167(1) deals with the situation where a registrant sells or transfers all or substantially all of the assets used in a business that is a commercial activity (i.e., a transfer of a business as a going concern). The section provides that, where the vendor and the purchaser of the assets are both registrants and jointly agree, and an election to this effect is filed with the Minister by the vendor, the sale of the business as a going concern (that is the supply of the assets) is not subject to tax. The assets are treated as having been acquired for use exclusively in a commercial activity of the purchaser. The purpose of this rule is to ensure that the change-of-use rules in the sections dealing with capital property apply to the extent that such property is used subsequently in a non-commercial activity -- for example in providing exempt financial or health care services. For purposes of calculating an input tax credit or liability of the purchaser upon a change of use of the property, the purchaser is considered to have paid the tax on the property that would be payable if the election under this section were not made.

Subsection 167(2) provides a similar rule in the case of the disposition of business assets on the death of an individual where the beneficiary receives the assets for consumption, use or supply in the course of commercial activities.

When Tax Payable

Section 168 When tax payable

This section deals with the timing of the liability for payment of the tax imposed under Division II on taxable supplies made in Canada. Subsection 168(1) sets out the general rule. Subsections 168(2) to (9) provide a number of exceptions to the general rule.

Subsection 168(1) General rule

The general rule, in respect of a taxable supply, is that GST is payable by the recipient on the earlier of the day on which the consideration is paid and the day on which the consideration becomes due. The rules for determining when consideration is treated as becoming due are set out in section 152.

Subsection 168(2) Partial consideration

This subsection makes special provision for situations where partial payments for a supply are made or fall due on more than one day -- for example, in the case of a supply of a service to be performed over a period of time and for which progress payments are made. In this case, tax is payable separately on the value of each partial payment on the earlier of the day on which the partial payment is paid and the day on which the partial payment becomes due.

Subsection 168(3) Supply completed

This subsection introduces an override to the rules in subsections (1) and (2) where there has been considerable delay in the issuance of an invoice for a taxable supply. Assuming the consideration for the supply is ascertainable (see subsection 168(6) below), subsection 168(3) provides that, where all or any part of the consideration has neither been paid nor become due on or before the last day of the calendar month following the month in which the supply is completed, GST thereon -- calculated on the value of the consideration or part -- is payable on that day. Thus, for example, where a supply is completed on August 15, and the invoice is not issued by the end of September, GST on the consideration would become payable on September 30. In this example, the supplier would be required to include the tax in the return for the supplier's reporting period that includes September 30.

Paragraphs (a) to (c) set out the rules to be followed in determining, for purposes of the override rule, the time when a supply is to be treated as having been completed. For this purpose a supply is to be treated as having been completed:

(a) in the case of sales of personal property (other than supplies described in (b) below) -- at the time when the ownership or possession of the property is transferred to the recipient (for example, in the case of property sold under a conditional sales contract, tax is payable on all payments under the contract no later than the month following the month of delivery of the property);

(b) in the case of sales of personal property where the supplier delivers the property to the recipient on approval, consignment, sale-or-return basis or other similar terms -- at the time when the recipient acquires ownership of the property or makes a supply of it to any other person other than the supplier; and

(c) in the case of a supply under a written agreement to construct, renovate, alter or repair real property or a marine vessel (where, in respect of the vessel, the work will require more than three months to complete) -- at the time when such construction, renovation, alteration or repair is substantially completed.

It should be noted that this override rule does not apply in the case of a supply of a service or intangible personal property.

Subsection 168(4) Continuous supplies

This subsection provides an exception to the override rule in subsection 168(3) for supplies, such as electricity and natural gas, that are supplied on a continuous basis by way of a wire, pipeline or other conduit, and the supplier invoices the recipient on a regular basis. As a consequence, the general timing rule for the payment of tax described in subsection 168(1) applies to continuous supplies. As a practical matter, therefore, the time at which liability for the GST arises on a continuous supply is the date the supplier issues an invoice or the date of the invoice, whichever is the earlier.

Subsection 168(5) Sale of real property

Subject to the condition that the amount of the consideration is ascertainable (see subsection 168(6)), this subsection provides that, in the case of a taxable sale of real property, GST generally is payable on the earlier of the day on which ownership is transferred to the recipient (i.e., "closing") and the day on which possession of the property is transferred to the recipient. However, where the property supplied is a residential unit in a condominium complex which has not, at the time possession is transferred, been registered as a condominium, tax is not payable until ownership of the unit is transferred or, if earlier, 60 days following the date of registration. (For transitional provisions relating to condominiums, refer to section 336.)

Subsection 168(6) Value not ascertainable

This subsection covers the situation where tax on a supply becomes payable on a day determined under subsection (3) or (5), but the value of the consideration or any part of the consideration is not ascertainable at that time. For example, if a person agreed to sell a historical property to be preserved as a museum in return for a flat amount plus a percentage of the admission receipts, the tax would be calculated on that part of the consideration that is ascertainable -- the fixed amount -- on the day that amount is paid or becomes payable under the agreement for the supply. The tax on the value of the consideration that is not ascertainable -- the percentage of the admission receipts -- would become payable on the day on which that value or any part thereof becomes ascertainable.

Subsection 168(7) Retention of consideration

This subsection introduces a special exception to the timing of the GST liability rules for "holdbacks". It applies in certain cases where the recipient of a taxable supply retains a part of the consideration for the supply pending full and satisfactory performance of the supply or of some part of the supply. The amount retained is often referred to as a "holdback" because the amount otherwise payable by the recipient of the supply is held back as security against liens. Holdbacks are particularly common in the construction industry. Where the holdback amount is legislatively sanctioned or provided for in a written agreement for the construction, renovation or repair to a marine vessel or real property, GST calculated on the amount held back becomes payable on the earlier of the day on which the holdback amount is paid and the day on which the "holdback" period expires. Holdbacks not specifically mentioned do not defer the time at which GST becomes payable.

Subsection 168(8) Combined supply

Instances may arise where a combination of service, personal property and/or real property are supplied to a recipient for a single all-inclusive amount. This subsection sets out the rule to be used in determining whether a combined supply is to be treated as a supply of service, personal property or real property in order to apply the provisions in paragraphs 168(3)(a) to (c) and subsection 168(5) to determine the time at which liability for GST arises.
Paragraph 168(8)(a) provides that, if the value of one of the elements in the supply exceeds the value of each of the other elements individually, the entire supply is to be treated as a supply of that element. Paragraph 168(8)(b) deals with those combined supplies not falling within paragraph (a) and provides that, where one of the elements is real property, the supply is to be treated as a supply of real property and in any other case, the supply is to be considered as a supply of a service.

An example of the application of the combined supply rule would be an appliance dealer who sells and installs a dishwasher for a single all-inclusive price. Under the normal rules, the supply of the dishwasher (personal property) would be considered as completed when ownership or possession transfers to the recipient. However, the service of installing the dishwasher might not be completed until some time thereafter. Clearly, the dishwasher would be of greater value than the installation service. Consequently, under the rule in subsection 168(8), the entire supply would be treated as a supply of personal property and the tax would be payable on the installation service at the same time as it becomes payable on the dishwasher.

Subsection 168(9) Deposits

This subsection provides that, where a deposit is given with respect to a taxable supply, GST is not payable on the deposit until the time the supplier applies the deposit against the consideration for the supply. For the GST treatment of deposits that are forfeited, see section 182.

Subdivision b

Input Tax Credits

Section 169 Input tax credits

A fundamental principle underlying the GST is that no tax should be incorporated into the cost of inputs used by a registrant in the course of a commercial activity to produce a taxable supply (including a zero-rated supply).

To ensure that inputs to commercial activities effectively bear no GST, registrants are able to claim a full refundable credit, or "input tax credit", for the GST paid or payable on such inputs. This section provides that, to the extent a taxable input is used in a commercial activity, the tax paid or payable gives rise to an input tax credit.

For any given reporting period, input tax credits may be deducted by a registrant from the tax collected or collectible on taxable supplies in determining the net tax that is either to be remitted by the registrant or, where the credits exceed the tax collectible, to be refunded to the registrant. The provisions relating to the claiming of input tax credits and the calculation of "net tax" may be found in sections 225 to 239.

Subsection 169(1) General rule

This subsection sets out the general rule regarding input tax credits. Where a supply of property or service is acquired for consumption, use or supply exclusively in the course of a commercial activity of a registrant, the registrant is entitled to claim a credit equal to the tax paid or payable on the acquisition in the reporting period in which the tax was paid or, if earlier, became payable.

Subsection 169(2) Credit for partial use

This subsection provides that, where an input is not used exclusively in the course of a commercial activity -- for example where a part of the input goes toward making an exempt supply, or is for the personal use of the registrant -- the registrant must apportion the GST paid or payable on the input between the use of the input in a commercial activity and any other use. A credit may only be claimed in respect of the input tax attributable to the use in the commercial activity. For example, if the commercial use of an acquisition is 60 per cent, only 60 per cent of the GST paid or payable by a registrant on the acquisition would be creditable. Of course, if the acquisition is "exclusively" (defined in subsection 123(1) as, generally, 90 per cent or more) for use in a commercial activity of a registrant, the GST paid or payable would be fully creditable.

For purposes of determining an input tax credit in respect of a passenger vehicle or aircraft that is partly for the personal use of a registrant (e.g. a self-employed individual or partner), the amount of tax considered to have been paid by the registrant is determined annually under subsection 202(4) as 7/107ths of the capital cost allowance (CCA) of the vehicle or aircraft that is deducted for income tax purposes. The amount on which the CCA deduction is based would already exclude a portion of the cost of the vehicle or aircraft attributable to any personal use. Therefore, the amount of tax determined under subsection 202(4) need only be prorated under subsection 169(2) in those limited cases where the vehicle or aircraft is used in both commercial and exempt activities. It should be noted that the CCA-based input tax credit only applies where the passenger vehicle or aircraft is not used exclusively in commercial activities of the registrant. Where it is used exclusively (i.e., 90% or more) in commercial activities, the input tax credit is determined in the normal manner based on actual tax payable on the acquisition of the vehicle or aircraft and is claimable in full for the period in which that tax became payable.

There are restrictions on input tax credits claimable on certain specified input costs that have a significant personal consumption element. These restrictions are set out below in section 170. Moreover, simplified input tax credit apportionment rules apply in the case of capital personal property acquired by registrants (other than financial institutions) and capital real property acquired by public sector bodies. These rules may be found in sections 199 to 211.

Subsection 169(3) Time tax payable

Under subsection 169(1), an input tax credit for a reporting period of a registrant is the tax that was paid or became payable in that period. This subsection provides that in the case of an invoiced supply, for purposes of determining an input tax credit only, the tax is considered to have become payable as of the date of the invoice for the supply.

Subsection 169(4) Required documentation

This subsection provides that a registrant is not permitted to claim an input tax credit unless, prior to claiming the credit, the registrant has sufficient evidence to support the claim. Sufficient evidence for this purpose would include an invoice issued by a supplier to a registrant containing sufficient information to determine the amount of the credit.

Subsection 169(4) provides an additional requirement in the case of a sale of real property to a registrant where, pursuant to subsection 221(2), the registrant, as purchaser, is required to remit the tax on the sale, instead of the vendor. This applies in the case of a sale of any real property by a non-resident person and all sales to registrants of commercial property (as well as residential property if the registrant is not an individual). In these circumstances, the registrant purchasing the property is not able to claim an input tax credit in respect of the acquisition of the property until the registrant files the special return required under subsection 228(4) accounting for the tax thereon. If the property is primarily for use or supply in the course of commercial activities of the registrant, the due date for filing the return coincides with the due date for filing the registrant's regular return for the reporting period in which the sale takes place. Therefore, the registrant is able to claim an input tax credit for the tax on the property at the same time as that tax is required to be remitted by the registrant. Subsection 228(6) permits a set-off of this tax remittable against any net tax refund or rebate owing to the registrant. Therefore if, after claiming an input tax credit in respect of the acquisition of the real property, the registrant reports a net tax refund on the registrant's regular GST return, this refund could be deducted from the tax remittable in respect of the real property and, if this difference were negative, the registrant could obtain a refund.

Subsection 169(5) Exemption

This subsection provides authority for the Minister of National Revenue to exempt a registrant or class of registrants from the information requirements under subsection (4) where the Minister is satisfied that sufficient records otherwise exist to support any claim for an input tax credit.

Section 170 Restriction

The GST is designed as a tax on final consumption. This section sets out limits on input tax credits that may be claimed in respect of purchases by a registrant that have a significant personal consumption element.

Subsection 170(1) Restriction

This subsection lists certain taxable supplies received by a registrant which do not give rise to any input tax credit entitlement:

(a) a supply of a membership in a club, the main purpose of which is to provide dining, recreational or sporting facilities;

(b) a supply of property or a service acquired by a registrant exclusively for the personal consumption, use or enjoyment of an officer or employee, or related individual, of the registrant, except if

(i) the property or service is resupplied at its fair market value by the employer to the officer or employee in the reporting period of the registrant in which it was acquired, or

(ii) the benefit to the officer, employee or related individual would not be treated as a taxable benefit under the Income Tax Act if the property or service were provided without charge;

(c) a supply of property to a registrant by way of lease, licence or similar arrangement, primarily for the personal consumption, use or enjoyment of

(i) where the registrant is an individual, the registrant or a related individual, or

(ii) an individual who is, or who is related to, an employee, officer, shareholder or beneficiary of the registrant

except where the property is resupplied at its fair rental value in a reporting period of the registrant and the consideration therefor becomes payable by the individual before the end of that period.

Subsection 170(2) Idem

This subsection is patterned on section 67 of the Income Tax Act. It provides that no input tax credit may be claimed by a registrant in respect of a particular supply except to the extent that both the nature of the supply and the consideration therefor are reasonable in the circumstances having regard to the commercial activities of the registrant.

Subdivision c

Special Cases

Becoming and Ceasing to be Registrant

Section 171 Becoming and ceasing to be a registrant

This section sets out the rules that apply where persons change their GST status by becoming a registrant or ceasing to be a registrant.

Subsection 171(1) Person becoming registrant

There is no requirement for a person qualifying as a "small supplier" to register for GST purposes. However, where the commercial activity of an unregistered small supplier expands to the point where the person's taxable supplies exceed the $30,000 value threshold (see section 148), that person is required to register and collect GST. Subsection 171(1) sets out the rules relating to input tax credits that may be claimed in respect of any assets on hand at that time. The same treatment applies where a person qualifying as a small supplier elects to become a registrant.

Where a person who is a small supplier becomes a registrant at any time, the person is considered to have acquired the assets used in commercial activities immediately after that time and to have paid tax on the assets. As a consequence, such tax will qualify as an input tax credit and may be claimed in the first return filed by the person as a registrant. The amount for which an input tax credit may be claimed is set out in paragraph (b). The credit determined with respect to each asset will be the lesser of two amounts:

- the total of all GST actually paid on the asset in respect of which the person had not previously claimed a credit or a rebate, and
- the amount of tax that the person would be required to pay if the asset were acquired at its fair market value at the time the person became a registrant.

Of course, if no GST were ever paid on any given asset -- for example, if it were purchased before implementation of the GST -- no input tax credit would be available.

Subsection 171(2) Services and rental property

This subsection sets out the rules applicable with respect to input tax credits for the tax paid on services and rental payments by a small supplier or other person who subsequently becomes a registrant.

When a person becomes a registrant, paragraph (a) permits an input tax credit for any tax that became payable before that time

- on services to be rendered to the person after the person becomes a registrant, or
- on any rent, royalty or other similar payment relating to property attributable to a period after the person becomes a registrant.

Of course, the input tax credit is available only to the extent that the service or rental is for consumption, use or supply in the course of commercial activities of the person. Paragraph (b) sets out the corresponding rule for GST payable by a person after becoming a registrant. In this case, no input tax credit is allowed to the extent that the tax is on a payment for services provided before registration or on a rental payment attributable to the period before registration.

Thus, for example, if a small supplier becomes registered on, say, March 15th, an input tax credit entitlement would arise for the tax on rent paid before that date for the use of a business asset to the extent that the rent related to the period after March 14th. In this case, the credit would be claimed in the registrant's first GST return.

Subsection 171(3) Properties on ceasing to be a registrant

This subsection deals with the treatment of property used in a commercial activity where a person ceases to be a registrant. In this case, the person previously will have claimed input tax credits for tax paid on the acquisition of various assets. As the person will now be putting those assets to a non-commercial use, this subsection is intended to recapture the credits previously claimed by treating the person as having disposed of the property at its fair market value immediately before becoming unregistered and to have collected tax thereon. As a result, the person will be required to account for GST on the deemed disposition in his or her last GST return as a registrant.

Subsection 171(4) Services and rental properties

This subsection deals with the determination of the input tax credit for the tax paid on services and rentals of property at the time a person ceases to be a registrant. This determination is for purposes of the person's final reporting period as a registrant. In essence, this subsection requires the person to apportion any service or rental payments covering a period of time that straddles the point at which the person ceases to be a registrant in order to ascertain the input tax credits that may be claimed in respect of the GST paid on the services or rental payments.

Paragraph (a) deals with the situation where GST becomes payable on an expense incurred after the person ceases to be a registrant. It allows for the inclusion, in the person's input tax credit determination, of any GST to the extent the tax is payable in respect of services supplied to the person when the person was a registrant or rent for the use of property when the person was a registrant.

Paragraph (b) denies an input tax credit for the tax payable, while a person was registered, on services to be rendered in the period after registration is terminated and on rental payments for the use of property in that period.

Appropriation of Property

Section 172 Appropriation of property

Section 172 requires a registrant to account for GST on property or a service acquired or produced in the course of a commercial activity and appropriated for the registrant's own personal use or enjoyment. Where the registrant is a corporation or other organization, a parallel rule is provided for property or service appropriated for the benefit of a shareholder or member of the organization. These rules do not apply to capital properties which are covered in the special rules in sections 199 to 211.

Subsection 172(1) Use by registrant

Subsection 172(1) deals with property or services acquired by a registrant in the course of a commercial activity that subsequently are taken for the personal use or enjoyment of the registrant or an individual related to the registrant. In essence, there has been a diversion from a commercial use to private consumption by the registrant. An example would be where an individual retailer who is a registrant appropriates a television set from inventory for personal use. In this case, an input tax credit would have been available to the registrant for the tax paid on the original purchase of the set. In such cases, subsection 172(1) treats the registrant as having self-supplied the television set at its fair market value and to have collected tax on the supply. As a result, the individual would be required to remit tax on the supply to the Receiver General. In other words, the individual is placed on the same footing as would be the case if the set had been acquired at its normal retail selling price.

Subsection 172(2) Benefits to shareholders, etc.

Subsection 172(2) provides a parallel self-supply rule where the appropriation of property or services is to or for the benefit of a shareholder, beneficiary, partner or member of a corporation, trust, partnership, charity or non-profit organization that is a registrant. Where there is such an appropriation, the registrant is considered to have made the supply at its fair market value and to have collected the GST on that amount. Such tax is then required to be remitted to the Receiver General.

Subsection 172(3) Application

Subsection 172(3) provides that where, by reason of section 170, a registrant was not entitled to claim an input tax credit in respect of the acquisition of property or a service for the personal use of the registrant, employee, shareholder or other person, the rules in subsections (1) and (2) do not apply. The purpose of this rule is to ensure that the supply is not taxed twice -- once on acquisition by the registrant and then again when the property is appropriated for personal use.

Taxable Benefits

Section 173 Employee and shareholder benefits

Where a registrant makes available to an employee or a shareholder property or a service, resulting in a benefit required by paragraph 6(1)(a) or (e) or subsection 15(1) of the Income Tax Act to be included in the employee's or shareholder's income, the registrant is treated as having made a supply to the employee or shareholder. Pursuant to new subsection 6(7) of that Act, the value of the benefit added to income under those paragraphs is determined without reference to the GST payable on the property or service. The GST in respect of the benefit is to be included in the individual's income under new paragraph 6(e.1) of that Act. The amount of GST so included is equal to 7 per cent of the value of the benefit after deducting an amount in respect of any provincial retail sales tax that was payable on the property or services (see the commentary on Clause 37 amending section 6 of the Income Tax Act). Consistent with this income tax treatment, under subsection 173(1) the amount of GST that the registrant is required to remit in respect of the deemed supply to the individual is the same amount of GST as is included in the individual's income -- 7 per cent of the benefit net of applicable provincial retail sales tax.

For the purposes of this rule, the supply is treated as having been made, in the case of a benefit conferred on an employee, at the end of February in the year following that in which the benefit was conferred. This timing coincides with the time at which employers are required to calculate employee benefits for income tax purposes and to have prepared T-4 slips reporting remuneration, taxes and other amounts. As a result, it simplifies the calculation of the tax. In the case of a shareholder benefit, the supply is treated as having been made on the last day of the registrant's taxation year in which the benefit was conferred.

GST does not apply to the benefit if it is an exempt supply of property or service, or where, by reason of section 170, the benefit consists of a property or service for which the registrant was denied an input tax credit. Nor does it apply where the person conferring the benefit is not a registrant. Further, this provision does not apply in the case of a passenger vehicle or aircraft of an individual or partnership not used exclusively in commercial activities or, in the case of other registrants (other than financial institutions), not used primarily in commercial activities. In these cases, the registrant would not have been entitled to an input tax credit when the vehicle or aircraft was first purchased.

In the case of a passenger vehicle or aircraft leased by a registrant and used less than 50 per cent in commercial activities or a vehicle or aircraft purchased or leased by a financial institution, the registrant may elect to have any benefit in respect of the vehicle or aircraft not subject to GST. However, no input tax credit may be claimed by the registrant in respect of the property and, to the extent that the registrant claimed any input tax credit on its acquisition, on making the election, the credit will be recaptured.

Allowances and Reimbursements

Section 174 Travel and other allowances

This section deals with allowances paid by a person to employees for expenses incurred in Canada for supplies all or substantially all of which are taxable (such as travel expenses). To the extent that the allowance is (or would be) deductible in computing the income of the person for a taxation year for the purpose of the Income Tax Act, the person is treated as having received a taxable supply and to have paid, at the time the allowance is paid, GST in respect of the supply equal to 7/107ths of the allowance. The effect is to permit the employer to recover by way of an input tax credit the GST paid by the employee on expenses which, if incurred directly by the employer, would be recoverable as input tax credits. The same rule applies where the registrant is a partnership with respect to allowances paid to members of the partnership.

Section 175 Reimbursement of employees and partners

This section provides that, where an employer or a partnership reimburses an employee or member for expenses incurred by these individuals on behalf of the employer or partnership, and the amounts reimbursed include GST, the tax is considered to have been paid by the employer or partnership. As a result, the employer or partnership, if registered, is able to recover the GST paid by the employee or member as an input tax credit in the normal manner.

Used or Specified Tangible Personal Property

Section 176 Used tangible personal property and specified tangible personal property

Used tangible personal property ("used goods") sold by a registrant is generally subject to GST. This section provides a notional input tax credit to a registrant who purchases used goods without having to pay tax, as would be the case if the goods are purchased from a non-registrant. The purpose of the notional credit is to avoid the cascading of the GST that would otherwise occur, if, say, used goods are acquired by a registrant from a non-registrant (who originally paid the GST on the goods and could not claim an input tax credit).

In principle, the rules in this section should apply only where the used goods had originally been subject to the GST. However, it would not be practicable to apply such a restriction. Instead the general rule as set out in paragraph 176(1)(a) applies in respect of all such used goods acquired in Canada by a registrant after 1993. Prior to 1994, paragraph 176(1)(b) permits notional input tax credits for used goods to be claimed only by registrants who acquire such goods for purposes of resupply; that is, used goods dealers. Subsection 176(2) is a transitional rule that provides for a recapture of any notional input tax credits claimed where a dealer sells used goods on a zero-rated basis (e.g., for export), or the equivalent thereof.

Special rules apply to used specified tangible personal property such as works of art. The definition of specified tangible personal property in subsection 123(1) essentially mirrors the definition of listed personal property in paragraph 54(e) of the Income Tax Act. Given their appreciating nature, providing notional input tax credits for purchases of such goods from, say, non-registrants, would mean refunding more tax than the non-registrant had originally paid. Purchasers of new or used specified tangible personal property that exceeds the prescribed amount are denied a notional or actual input tax credit unless the property is acquired for resupply (subsection 176(5)) or an election is made under subsection 176(6). There are also special recapture rules in relation to exported used specified tangible personal property (subparagraph 176(2)(d)(ii)).

Subsection 176(1) Acquisition of Used Goods

Paragraph 176(1)(a) applies to the situation where, after 1993, a registrant purchases a used good and no tax is paid on the purchase e.g., if the good was purchased from a non-registrant or from a registrant who had not used the good primarily in a commercial activity (see subsection 200(3)). Provided that the registrant acquires the used good for use, consumption or supply in the course of the registrant's commercial activities, this subsection treats the registrant as having paid GST, equal to 7/107ths of the purchase price. The registrant may then claim an input tax credit in respect of this amount under the rules in section 169. As an example, assume a used car dealer pays $5,350 for a car purchased from an individual. The dealer would be treated as having paid tax of $350 (7/107 X $5,350) in respect of which an input tax credit could be claimed. Equivalently, the dealer can be considered as having paid $5,000 consideration (100/107ths of $5,350) and GST of $350 (7% of $5,000). Any subsequent sale of the car by the dealer would be taxable in the ordinary way. If the dealer sells the car for $6,000, GST of $420 (i.e. 7% of $6,000) would be charged. Because the dealer would earlier have claimed an input tax credit of $350, the net tax payable on the purchase and resale of the car would be $70 ($420 - $350, i.e. 7% of the dealer's margin which is $6,000 less $5,000). In effect, on the sale of the goods by the registrant, the input tax credit claimed in respect of the notional tax would be recaptured and tax would be paid on the dealer's margin.

This rule does not apply where the supply to the registrant is a zero-rated supply (a supply described in Schedule VI to the Act). It should be noted that restrictions apply to the claiming of an input tax credit on purchases of specified tangible personal property under subsection 176(5).

The special rules in this subsection do not apply in the case where used goods are received by a registrant from another registrant making a taxable supply in the course of a commercial activity. In this case, GST is payable on the supply in the normal manner, and the regular rules relating to input tax credits apply.

Paragraph 176(1)(b) is a transitional provision dealing with used goods supplied to a registrant before 1994. It differs from the rule described in paragraph (1)(a) in that it applies only to those circumstances where used goods are acquired by a registrant for purposes of supply (i.e. to be resold or leased) in the course of the registrant's commercial activities. As a result, a registrant acquiring used goods before 1994 from a non-registrant for use other than for the purposes of subsequent supply (e.g. if the used good was acquired for use as capital property) is treated as not paying any GST on the goods. Hence, the person is not able to claim an input tax credit in respect of the acquisition.

Subsection 176(2) Export of used goods

This subsection addresses two problems that would otherwise arise under subsection (1). First, many used goods exported during the first few years of the GST will not have borne GST when originally acquired by the non-registrant. Second, specified tangible personal property such as works of art typically appreciate in value. In both cases, any input tax credit claimed in respect of the notional tax calculated under subsection (1) may exceed the GST originally paid on the good by a non-registrant. In the case of a used good that is resold by a registrant in Canada, the notional input tax credit ensures that only the value added to the good by the registrant is taxed. However, where a notional input tax credit has been claimed by a registrant and the used good is subsequently exported under zero-rated conditions, the notional credit would result in the export sale being subsidized -- a perverse result in the context of a general consumption tax. To address this situation, subsection 176(2) provides that, in the circumstances outlined above, there is a recapture of notional and, in some cases, actual input tax credits claimed by a registrant. The recapture of actual tax paid addresses the situation where a used good is acquired from a non-registrant by a registrant who sells it to a second registrant who, in turn, exports it.

This subsection provides that where a registrant makes a zero-rated supply or a supply outside Canada (e.g., an export sale) before 1994 of used goods, or makes such a supply at any time of used specified tangible personal property where the consideration paid by the registrant for the property exceeds the prescribed value, the registrant is treated as making the supply in Canada. As such, the registrant is required to pay tax under this subsection. In the case of used goods other than specified tangible personal property, the amount of this tax is the lesser of:

> (i) if tax was paid in respect of the purchase of the good, the tax that was so paid, or where subsection 176(1) applied, the notional tax that under that subsection is considered to have been paid, or the tax that would have been paid for the good had not section 156 or 167 applied (i.e., where the good had been purchased tax free as part of the purchase of a business or from a closely related corporation); and

(ii) tax that would have been payable if the supply were a taxable supply in Canada.

For example, suppose that, in the example used above in subsection (1), the dealer had purchased the car in 1992 for $5,350, claimed the input tax credit for the notional tax paid of $350, and subsequently exports the car for $6,000. Under subsection 176(2) the dealer would be required to pay GST of $350 (i.e., to repay the input tax credit earlier claimed).

Separate rules apply to used works of art and other property that fall into the category of used specified tangible personal property. It should be noted that pursuant to subsection 123(1), specified tangible personal property is not considered "used" provided that it can be established that the property has been held only as dealers' inventory since the later of the beginning of January 1, 1991, the day the work was last imported into Canada or, in the case of prints, etchings, drawings, paintings, sculptures or similar works of art, the day the originating artist first sold the property. Consequently, where a work of art is imported and held only by one or more dealers as inventory before being exported, it is not considered "used" and therefore the exporting dealer would not be subject to the recapture rules in subsection 176(2).

Where specified tangible personal property purchased for consideration exceeding the prescribed amount in respect of the property is "used" (for example, where it has been held in Canada by an individual for personal use) and is exported by a person who was entitled to an actual or notional input tax credit in respect of the property (or would have been so entitled if the property had not been acquired tax free under section 156 or 167), the person is required to pay tax equal to the least of:

- the tax that would be payable if the property were sold in Canada,
- where the person was entitled to claim a notional input tax credit on the acquisition of the property, the amount of that credit,
- where the person actually paid tax on the acquisition of the property (e.g., had acquired it from another dealer),
    - a prescribed percentage of that tax, and
    - the last notional input tax credit claimed by a registered dealer in respect of the property, where this amount can be established.

Subsection 176(3) Returnable containers

This subsection sets out the rules for returnable containers used in the delivery of taxable (that is, non-zero-rated) property, such as returnable soft drink bottles.

Where a registrant purchases a returnable container from a non-registrant (for example, where an individual returns used soft drink bottles to a retailer in exchange for a bottle deposit refund), this subsection allows the registrant to claim a notional input tax credit equal to 7/107ths of the amount paid to the non-registrant. The credit is available, however, only if the amount refunded is equal to the full amount of the deposit including the GST thereon. It should be noted that no notional credit may be claimed in respect of a container for a zero-rated good (e.g., a milk bottle) as no tax would have been charged on the deposit for such a container.

Subsection 176(4) Non arm's-length purchase

This subsection limits the notional input tax credit where used goods are acquired by a registrant in a non-arm's-length transaction. In this case, where used goods are acquired for an unduly high price, the notional input tax credit is restricted to the input tax credit that would be available if the consideration were equal to the fair market value. The subsection also prevents an unduly low price for used property exchanged in a non-arm's length transaction from resulting in an understatement of the amount of an actual or notional input tax credit to be recaptured on the subsequent export of the property.

Subsection 176(5) Restriction

This subsection restricts the claiming of input tax credits (whether real or notional) on specified tangible personal property above an amount to be prescribed by regulation except where the registrant acquires such property for resupply purposes. Specified tangible personal property is defined in subsection 123(1) to include works of art and other property listed in paragraph 54(e) of the Income Tax Act (i.e.,"listed personal property").

Subsection 176(6) Museums, galleries, etc.

This subsection contains an election for a registrant to be excepted from the restriction in subsection 176(5). Under this election, a registrant who purchases or imports new or used specified tangible personal property for consideration in excess of the prescribed amount is permitted to claim actual or notional input tax credits for the property. This election may be where the registrant acquires the property for the purpose of exhibiting it in the registrant's museum, gallery or other similar establishment and the registrant charges taxable admissions to visitors.

Subsection 176(7) Effect of election

This subsection provides that where an election is made under subsection (6), any supply by resale of the property would be taxable.

Agents

Section 177 Agents

This section introduces special rules where supplies are made by an agent on behalf of an undisclosed principal. Subsection 177(2) also provides a special rule in the case of prescribed registrants that supply intangible personal property, such as copyrights, on behalf of artists.

Subsection 177(1) Supply by agent

Paragraph 177(1)(a) deals with the case of a supply of property by a principal who is not a registrant and, therefore, not required to charge tax on the supply. Where the agent does not disclose this fact to the recipient of the supply, the agent, and not the principal, is considered to have made the supply and, except where the supply is an exempt or zero-rated supply, the agent is required to collect and remit GST equal to 7 per cent of the consideration paid by the recipient. For example, where an auctioneer sells a used good and does not disclose to the buyer that the property is being sold on behalf of an individual who is not engaged in a commercial activity, GST applies to the sale. In this case, the auctioneer is treated as if the goods had been purchased from the undisclosed principal for resale by the auctioneer. Consequently, the auctioneer would be entitled to a notional input tax credit under the general used goods rules set out in section 176.

Paragraph (1)(b) deals with the case where the undisclosed principal is a registrant who makes a taxable supply of property or a service. As in the case of the unregistered principal, the agent is considered to have purchased the property or service from the principal and to have resupplied it to the recipient. However, in this case, since the principal is a registrant, the principal is required to collect tax on the deemed supply to the agent. This tax is calculated on the actual selling price to the recipient, less the agent's commission. The agent, in turn, is able to claim an actual input tax credit for the tax payable to the principal.

In both the cases described in paragraph (a) and (b), the agent's services to the principal are treated as not being a supply; therefore, GST is not required to be added to the agent's commission. Instead, the value of the agent's services is effectively taxed when the agent charges tax on the full sale price of the property.

Subsection 177(2) Supply for artists, etc.

This subsection provides that where a prescribed registrant, in the course of a commercial activity, makes a supply on behalf of another person in respect of a copyright or other intangible personal property of an artist, the registrant is deemed to be the supplier of that intangible property. It is contemplated that this rule will apply in the case of a royalty collective that collects royalties on behalf of several artists. The supply of the rights for which the royalties are received would be considered to be made by the collective and therefore taxable, regardless of whether the actual supplier (e.g., the artist) is a registrant. However, the supply of the rights would still be attributed to the artists for purposes of applying the threshold tests in determining their eligibility for small supplier status and their reporting periods. The collective's distribution to the artists of revenues collected on their behalf would not be subject to GST.

Section 178 Expenses incurred in supply of service

This section applies where a person incurs an expense in the making of a supply of a service to a recipient and is reimbursed for such expense by the recipient. As a general rule, the reimbursed amount is treated as being part of the consideration for the supply of the service. Therefore, if the service supplied is a taxable supply (other than a zero-rated supply), the amount reimbursed is also subject to tax.

Specifically excluded from the general rule in section 178 are expenses incurred by a person in the person's capacity as an agent of the recipient. Thus, for example, a lawyer reimbursed by a client for payment of land transfer taxes and other expenses incurred in the client's name in a real estate transaction is not required to collect GST on such disbursements.

Non-resident

Section 179 Supply for non-resident

This section deals with the special case where a registrant in Canada delivers property to a person resident in Canada on behalf of a non-resident who is not a registrant (i.e., a drop-shipment on behalf of a non-resident). It applies, for example, where a non-resident person furnishes to a registrant a list of names of customers in Canada and instructs the registrant to ship property (such as records) to those customers in the quantities detailed in the customer list. In a typical case, the customers in Canada would be invoiced directly by the non-resident person for the taxable supplies they receive but, being a supplier who has not registered for GST purposes, the non-resident person would not be required to collect and remit tax payable by the customers in Canada who received the supplies. In these circumstances, this section requires the registrant delivering the property to the customers to account for the tax on the supplies made to the non-resident's customers in Canada. Thus, the tax that would have been charged if the non-resident were a registrant is to be collected by the person in Canada who supplied the property on behalf of the non-resident.

Paragraph 179(a) sets out the value for tax on which the registrant must account for GST on a drop shipment. Generally, the consideration will be the greater of the value of the consideration for the supply by the registrant to the non-resident person and the value of the consideration payable for the supply to the customer in Canada. However, subparagraph 179(a)(ii) provides that, where the non-resident person and the customer are not dealing at arm's length, or the registrant cannot reasonably determine the consideration charged by the non-resident to the customer, the consideration is the amount that would be reasonable in arm's length circumstances. Note that the rules in this section do not apply where the non-resident is a registrant. Under section 240 a non-resident who regularly solicits orders for goods that the non-resident supplies for delivery in Canada may register for GST purposes. As a registrant, the non-resident would be responsible for collecting GST on the sale price to the consumer and would be entitled to claim an input tax credit for tax paid on the services of the agent in Canada and any other taxable purchases.

Section 180 Supply by non-resident

Section 180 deals with situations where tax is imposed on the importation or delivery in Canada of new goods acquired by a registrant but the tax is paid by another person who, not being a registrant, cannot claim an input tax credit in respect of the tax. This section, in effect, permits a flow-through of the credit to the registrant.

Subsection 180(1) applies where an unregistered non-resident vendor is the importer of record in respect of goods to be supplied and delivered to a registrant in Canada. In this case, the non-resident would be responsible for paying GST on the importation. However, because the non-resident is not a registrant, an input tax credit may not be claimed for that tax. In such a case, as long as the non-resident provides the registrant with satisfactory evidence that GST has been paid on the goods, the registrant may be considered to have paid that tax and, thus, be able to claim an input tax credit to the same extent as would have been the case if the registrant had been the importer of record and had actually paid the tax.

Subsection 180(2) applies to a drop-shipment of goods under circumstances to which section 179 applies. In this situation, an unregistered non-resident person is required to pay tax in respect of a supply made to a registrant in Canada. Since the non-resident is not registered, an input tax credit may not be claimed for the tax. Under this subsection, the registrant is considered to have paid that tax and thus may claim an offsetting input tax credit provided the non-resident provides the registrant with satisfactory evidence that the tax was paid. It should also be noted that, alternatively, where the non-resident regularly solicits orders for such supplies of property delivered in Canada, subsection 240(3) allows the non-resident person to apply to be a GST registrant even though the non-resident may not be considered to be carrying on business in Canada. In this case, sections 179 and 180 would not apply. The non-resident would collect tax on the supply of the property to Canadian customers and would be entitled to claim input tax credits in the normal manner.

Coupons and Rebates

Section 181 Coupons and rebates

This section deals with the treatment of manufacturers' coupons and rebates.

Subsection 181(1) Effect of acceptance of coupon

Under section 157, when a taxable product is sold, GST applies to the amount of the consideration net of the value of any coupon redeemed. Where the coupon was offered by a third party, such as a manufacturer, the person who makes the taxable supply typically will be reimbursed by the manufacturer or other third party for an amount equal to the aggregate of the face value of the coupons submitted for reimbursement plus an additional amount to cover handling costs.

Subsection 181(1) provides that the reimbursement and the associated handling charge are not to be treated as consideration for a supply. As such, they do not attract GST. Also, since the transaction is not considered to be a financial service, it does not affect either party's ability to claim input tax credits.

Subsection 181(2) Rebates

This subsection deals with the circumstance where a cash rebate is offered directly to a customer by a manufacturer or other third party in respect of a purchase of a taxable product or service either from the manufacturer or from a retailer.

Under subsection 181(2), the manufacturer or other third party is treated as having received a taxable supply of a service from the customer for use in a commercial activity and as having paid tax in respect of the supply equal to the tax fraction (i.e., 7/107ths) of the rebate. Thus, if an automobile manufacturer pays a rebate of $1,000 to an individual who purchased a car, the manufacturer is treated as having received a supply for $935 (100/107ths of $1,000) and paid tax thereon of $65. This amount may be claimed as an input tax credit by the manufacturer for the reporting period in which the rebate is paid.

Subsection 181(2) also provides that where the person receiving the rebate is a registrant who is entitled to an input tax credit or a refund of tax in respect of the purchase of the good or service, that person is treated as having made a taxable supply of a service and to have collected tax in respect of the supply equal 7/107ths of the proportion of the manufacturer's rebate that the input tax credit and any refund of GST claimed by the registrant is of the total tax paid on the good or service. In other words, if the registrant had claimed a 50 per cent input tax credit or refund, the registrant would have to remit 7/107ths of half of the manufacturer's rebate.

The result of these provisions will be that:

- where a rebate is provided to a consumer, the consumer pays tax only on the actual amount paid for the supply (that is, the purchase price net of the rebate); and
- where the rebate is provided to a registrant, the registrant is able to recover no more tax on the acquisition than was actually paid (the tax on the purchase price net of any subsequent cash rebate).

Subsection 181(3) Application

This subsection provides that, where a reimbursement or rebate is given by way of a credit note pursuant to section 232, the rules for rebates described in subsections 181(1) and (2) do not apply.

Forfeitures, Seizures and Repossessions

Section 182 Forfeiture

This section applies where, as a consequence of the modification, breach or cancellation of an agreement for the making of a taxable supply (other than a zero-rated supply) by or to a registrant, an amount is paid or a deposit is forfeited by a person to the registrant otherwise than as consideration for the supply. It also applies where a debt or other obligation of the registrant to the person is reduced or extinguished without payment on account of the debt or obligation. In either case, the registrant is treated as having made a taxable supply to the person. The registrant is considered to have collected the GST at the time of forfeiture equal to 7/107ths of the amount paid or forfeited. In addition, the other person is considered to have paid tax equal to 7/107ths of the amount paid or forfeited. As a result, the registrant is required to remit the tax deemed to have been collected. The person required to pay or forfeit the amount, if a registrant, is entitled to an input tax credit for the tax deemed to have been paid.

Section 183 Seizures and repossessions

This section sets out the rules relating to the application of GST to transfers resulting from the seizure or repossession of property, as well as the resupply or disposition of seized property by a creditor.

Subsection 183(1) Seizure and repossession

This subsection deals with the seizure or repossession of property from a person to satisfy a debt or obligation (in whole or in part) owed to another person under right or power exercisable by that other person. In these circumstances, the supply of the property that occurs when the property changes hands is treated as having been made for no consideration. Thus, GST does not apply to the transfer on the seizure or repossession of property.

Subsection 183(2) Supply of seized property

This subsection applies where a person, having seized or repossessed property, subsequently sells or leases the property. In this case, the person is treated as having supplied it in the course of a commercial activity (except where the supply otherwise qualifies as an exempt supply -- such as a used residential complex). Where that person is a registrant, that person is required to remit the GST on the sale. This rule does not apply where the seized property is sold by a court -- see subsection 183(4).

Subsection 183(3) Use of seized property

This subsection provides that, where a person who has seized or repossessed property commences to use it (other than for purposes of resupply -- see subsection 183(2), above), such person is treated as having acquired the property at that time for consideration equal to its fair market value. As a result, the person is, if a registrant, required to remit GST on the fair market value of the property (unless the property is otherwise exempt from tax). Of course, to the extent that the seized property is taken for use in a commercial activity, the registrant would be entitled to claim an offsetting input tax credit.

Subsection 183(4) Court seizures

This subsection provides that, where property is seized by a court officer under an order of the court and the property is subsequently disposed of by the court, the sale is treated as one made otherwise than in the course of a commercial activity. The effect is that GST does not apply to a disposition of property seized by a court.

Subsection 183(5) Seizure from non-registrant, etc.

The purpose of this subsection is to provide a notional input tax credit in respect of property seized or repossessed by a registrant who subsequently makes a taxable supply of the property. The credit is available if the registrant is able to satisfy the Minister of National Revenue that the person from whom the property was seized or repossessed was not entitled to claim any input tax credit or a rebate of GST in respect of the property. Where these conditions are satisfied, the registrant is treated as having acquired the property for consideration equal to the amount for which it was sold and to have paid tax in respect of that acquisition of the property calculated on that consideration. In effect, the notional input tax credit equals the amount of tax collectible on the resale of the property. This ensures that the property is not effectively taxed twice under the GST.

Property Acquired by Insurers on Settlement of Claim

Section 184

Insurance companies often take possession of damaged properties in the course of the settlement of an insurance claim -- this section deals with the treatment of such properties.

Subsection 184(1) Supply to insurer on settlement of claim

Subsection 184(1) treats a transfer of property to an insurer in the course of settling a claim as having occurred for no consideration. Therefore, GST does not apply to the supply of the damaged property by the insured party to the insurer.

Subsection 184(2) Supply by insurer

Subsection 184(2) provides that if the insurer resells the property, the sale is taxable unless the supply in question is a zero-rated or exempt supply.

Subsection 184(3) Use of property

If the insurer does not resell the property, but instead begins to use the property in its business, paragraph 184(3)(a) provides that the insurer is treated as having supplied the property and collected the GST, based on the fair market value of the property. If the insurer is a registrant, paragraph 184(3)(b) provides that the insurer is also considered to have paid the tax to a registrant and, therefore, is eligible for an input tax credit to the extent the property is used in a taxable activity. For example, if a claimant transfers a damaged good, worth $10,000 in its damaged state, to an insurer who proceeds to use it 10% in taxable activities and 90% in exempt activities, the insurer must first account for $700 of GST on the supply of the good, then claim input tax credits equal to 10% of the tax deemed to have been paid, or $70. This leaves the insurer with a GST liability of $630 -- the same amount as if the insurer had purchased the good from another registrant and had claimed 10% of the GST paid to the registrant.

Subsection 184(4) Transfer from non-registrant, etc.

Subsection 184(4) is designed to prevent double-taxation where an insurer acquires and re-sells damaged property from a person who was not eligible to claim an input tax credit in respect of the property. In this case, the insurer is required to charge tax on the supply of the property in the normal fashion, but is entitled to claim an input tax credit equal to the full amount of the tax collected.

Property and Services for Financial Services

Section 185

This section is intended to simplify the operation of the tax for a registrant who is not a financial institution, but who does provide some incidental financial services.

Subsection 185(1) Non-financial institutions

Subsection 185(1) provides that inputs used in the provision of financial services that are related to the commercial activities of a registrant that is not a financial institution (defined in section 149) are treated as having been used in a commercial activity of the registrant. As a result, a non-financial institution engaged in commercial activities is not required to determine the inputs that are used in the provision of financial services that are, in essence, incidental to their commercial activities.

Subsection 185(2) Financial service relating to commercial activity

Subsection 185(2) provides that, for individuals, a financial service is treated as not being related to the commercial activities of that individual except to the extent that the related income and expense are taken into account in determining the individual's income from a business for income tax purposes. Thus, for example, subsection 185(1) does not allow an individual carrying on a business to claim an input tax credit for the GST payable on investment counselling fees relating to a personal investment portfolio.

Section 186

This section provides special rules with respect to input tax credits that can be claimed by a corporation that has an investment in a related corporation or that acquires another corporation.

Subsection 186(1) Related corporations

Subsection 186(1) provides rules to cover the situation where a parent corporation resident in Canada has an investment in shares of the capital stock or indebtedness of a related corporation, and the related corporation is exclusively engaged in commercial activities. In this case, the investment is treated, for the purposes of claiming input tax credits, as the property of the parent corporation used exclusively in a commercial activity. As a result, the parent corporation is allowed to claim an input tax credit for the tax paid on any supply of property or service acquired by it that reasonably relates to the investment in those shares or that indebtedness.

Subsection 186(2) Takeover fees

Subsection 186(2) is relevant for cases where a corporation acquires or proposes to acquire all or substantially all of the voting shares of the capital stock of another corporation (the "target corporation") which is engaged exclusively in commercial activities. In these circumstances, the purchasing corporation is allowed to claim input tax credits for services or properties purchased in relation to the acquisition or proposed acquisition of the target corporation. These input tax credits can only be claimed once all or substantially all of the shares of the target are acquired or once the intention to acquire the shares is abandoned by the purchaser.

Subsection 186(3) Shares, etc., held by corporation

This subsection provides that, for the purpose of subsections 186(1) and (2) where a corporation is engaged exclusively in commercial activities, its shares and indebtedness held by related corporations are treated as property acquired for use exclusively by such other corporations in commercial activities. Thus, the shares held by a parent corporation in a subsidiary engaged exclusively in commercial activities will be treated as property used exclusively by the parent corporation in commercial activities for the purpose of the special rules in subsections 186(1) and (2).

Bets and Games of Chance

Section 187 Bets and games of chance

This section deals with bets on games of chance, such as casino games, or on a race or other similar event. In this case, the person with whom the bet is placed is treated as having supplied a service to the bettor for consideration equal to the amount determined in accordance with the formula set out in the section. This section does not apply to sales of bingo cards or lottery, raffle or break-open tickets which are considered to be sales of rights to play or participate in games of chance rather than the taking of bets on the games.

The purpose of the formula in section 187 is to net out any provincial taxes on bets placed and treat the remainder as a GST-included amount. This is consistent with the rule in section 154 that most provincial sales taxes levied on purchasers are not treated as being part of the consideration paid by the purchaser for purposes of the GST.

To illustrate the application of this formula, if the total bet placed on a casino game were $6.00 and a provincial tax of 10% applied, the amount of the bet net of provincial tax would be $5.45. The consideration for the service of taking the bet would be considered to be $5.09 (that is 100/107ths of $5.45). If the gambling event were a taxable activity, the operator would be treated as having collected 36 cents GST on the bet.

It should be noted that bingos, casinos and similar activities sponsored by non-profit organizations or charities, as well as a pari-mutuel betting on horse races, are exempt under sections 5.1 and 5.2 of Part VI of Schedule V to the Excise Tax Act.

The treatment of winnings and prizes won in a taxable game of chance is dealt with in section 188.

Prizes

Section 188 Prizes

This section deals with the GST treatment of prizes paid out by the organizer of a betting operation, game of chance, or competitive event.

Subsection 188(1) Prizes

This subsection deals with prizes paid out to bettors in a commercially-run game of chance. Where, in the ordinary course of that activity, the registrant pays money as a prize-winning to the bettor or participant in the game of chance, the registrant is treated as having received a taxable supply of a service and as having paid tax, and therefore eligible for a notional input tax credit, equal to the tax fraction (i.e., 7/107ths) of the total amount of money paid out as a prize or winning. As a result, the GST applies only on the operator's margin. (The tax treatment of bets is dealt with section 187 above.) Subsection 188(1) does not apply to bingos, casinos and similar activities sponsored by charities or non-profit organizations or to pari-mutuel betting on horse races. The exemptions for these activities are set out in sections 5.1 and 5.2 of Part VI of Schedule V to the Act. In addition, this subsection does not apply to prescribed government-owned lottery corporations that conduct lottery schemes. A special credit for these organizations is instead provided in subsection 188(5) as discussed below.

Subsection 188(2) Prizes in competitive event

This subsection deals with the situation where, in the course of an activity that involves the organization, promotion, hosting or other staging of a competitive event, prizes are awarded to winning competitors. In this case, the awarding of the prize is not considered to be a supply, nor is the prize itself considered to be consideration for any supply. No input tax credit is claimable in respect of any prizes. Thus, for example, where the sponsor of a curling bonspiel awards a prize to the winning rink, the awarding of the prize is not treated as a supply, and the members of the winning rink are not subject to GST on the prize. Where the prize consists of property, no input tax credit is allowed in respect of any tax paid by the registrant on the purchase of the prize.

Subsections 188(3) and (4) Contributions by competitors

Subsection 188(3) provides that where a participant in a competitive event contributes an amount to the prize purse to be awarded to participants in the event (for example, "stake" payments in horse racing), the contribution is treated as not being consideration for a supply. As a result, no tax will be collectible on such contributions. This rule does not apply where the contribution is an entrance fee and is not separately identified as a contribution to the prize.

Subsection 188(5) Input tax credit of a prescribed registrant

Subsection 188(1) (discussed above) permits a registrant conducting a commercial gambling activity to claim a notional input tax credit that effectively removes from the GST base the value of prize-winnings paid to bettors or persons playing games of chance conducted by the registrant. However, that subsection does not apply to prescribed lottery corporations. Instead, such organizations that conduct lottery schemes are entitled to a special credit under subsection 188(5). This credit equals 7 per cent of the value of the lottery corporation's profit after deducting expenses, including employee remuneration and agents commissions -- in effect, the fiscal dividend that is available for distribution to governments or to grant recipients. Pursuant to paragraph 188(5)(b), these corporations are not entitled to these corporations are not entitled to claim actual input tax credits for their purchases. However, if the corporation sells real property, it will be able to claim, at that time, a credit for any previously unclaimed tax paid on the acquisition of the property, to avoid double taxation. The rules in paragraphs 188(5)(c) and (d) ensure that the proper amount of credit is allowed at the time of sale of the real property. These rules also ensure that capital personal property on which no input tax credit has been claimed is not taxable on resale by the corporation (by virtue of subsection 200(3)).

Dues

Section 189 Dues in respect of employment

This section deals with the payment of union dues and payments to similar employees' associations. In essence, it provides that GST does not apply to union dues and other such payments whether paid by employees or by an employer on behalf of its employees. A parallel exemption is provided in Section 18 of Part VII of Schedule V for professional membership dues required to maintain a professional status recognized by statute. However, in the case of professional membership dues, the association may elect to have all such dues treated as taxable supplies, thereby enabling members who are GST registrants to claim an input tax credit in respect of their membership dues.

Real Property

Subsection 190(1) Conversion to residential use

Subsection 190(1) applies where a person converts non-residential real property into a residential complex without constructing or substantially renovating the complex. For example, a person may have purchased a building that was previously used as a restaurant, then renovated the building for the purpose of using it as a residential complex, but the renovation was not sufficiently extensive to qualify as a substantial renovation as defined in subsection 123(1). Subsection 190(1) treats the person as a builder that substantially renovated the complex.

This rule ensures that where a person is engaged in the business of buying used business or commercial premises and converting these to residential complexes for resale, the same GST rules apply as if the complexes were newly-constructed and sold by the builder. Further, by treating the person as a builder, where the buyer is an individual who intends to use the complex as the individual's primary residence, the individual, if eligible, may claim a housing rebate under section 254. The rule also ensures that, where an individual converts a building used in their business to use as their primary place of residence, and where tax was paid on the change of use (see subsection 190(2)), then by treating the individual as having substantially renovated the complex, the individual, if eligible, may claim the housing rebate under section 256.

Subsection 190(2) Conversion to personal use

Subsection 190(2) applies where an individual appropriates for the personal use or enjoyment of the individual (or of a related individual or former spouse) real property that was previously not a residential complex and was held or used in the individual's business or commercial activity. The individual in these circumstances is treated as having sold the building to him/herself and is required to remit GST on the fair market value of the property with the return for the reporting period in which it is appropriated for personal use or enjoyment. As a result of this provision, such individuals are treated the same as if they had purchased non-residential real property from another business in which case they generally would be required to pay tax on the purchase.

To illustrate the application of this provision, assume that a medical practitioner who is not a registrant purchases for $100,000 a building for use as an office in supplying exempt medical services. At that time, no input tax credit could be claimed for the $7,000 of GST that would have been paid. Assume the office is converted to a residence at a later date when the fair market value of the building is $200,000. The owner would be required to remit $14,000 of GST (7% of $200,000) but could claim a rebate, under section 257 (in lieu of an input tax credit which may only be claimed by a registrant), of the $7,000 tax originally paid. Because subsection 190(1) treats the owner as having substantially renovated the building, if he or she intends to use the property as a primary place of residence, a new housing rebate in respect of the GST paid under subsection 190(2) may be available to the individual under section 256.

Section 191 Self-supply of residential property

This section introduces self-supply rules where a builder constructs or substantially renovates a residential complex and subsequently rents it out to others or occupies it as a place of residence. In such a circumstance, the builder is treated as having sold and repurchased the residential complex. As a result, the builder is required to remit GST on the fair market value of the complex with the return for the reporting period in which the complex is substantially completed or rented out, whichever is later. As a result, the value-added by the builder is taxed. This rule ensures that such builders are treated the same as persons who purchase a new or substantially renovated residential complex for rental purposes. Where a builder has paid GST under the self-supply rules, any subsequent resale of the complex may be exempted under Schedule V of the Act.

The self-supply rule specifically does not apply to builders who are individuals and occupy a residential complex as their primary place of residence, provided that no input tax credits have been claimed in respect of the acquisition of the land and the construction or renovation.

Also excluded from the self-supply rule are universities, school authorities and public colleges which construct student residences, as well as registrants who construct residential complexes at remote work sites and elect not to have these rules apply (see subsection 191(7) below).

A number of important terms used in this section have specific definitions given to them in subsection 123(1). Among the more important terms are "single unit residential complex", "residential complex", "residential condominium unit", "residential unit", "substantial renovation", and "builder".

Subsection 191(1) Self-supply of single unit residential complex or residential condominium unit

This subsection applies the self-supply rule to newly-constructed or substantially renovated single unit residential complexes (detached houses, semi-detached houses and rowhouse units) and residential condominium units. It treats the builder of a substantially completed complex or unit as having made a taxable supply of the complex or unit either if it is rented out or, if the builder is an individual, it is occupied by the builder as a place of residence. Where this occurs, the builder is liable to pay GST at the later of the time the construction or renovation is substantially completed and the time possession is given to another person under the rental agreement or the builder moves in. The GST is to be calculated on the fair market value of the complex or unit at that later time.

Subsection 191(2) Self-supply of residential condominium unit

This subsection applies the self-supply rule to situations where the builder of a substantially completed residential condominium unit has given possession of the unit, after 1990 and before the condominium complex is registered, to the purchaser under an agreement of purchase and sale, the purchaser has occupied or rented out the unit and the agreement is terminated (otherwise than by performance of the agreement) without entering into a new agreement. In such a circumstance, the builder is liable to pay GST on the fair market value of the unit at the time the agreement is terminated.

Subsection 191(3) Self-supply of multiple unit residential complex

In the case of a substantially completed multiple unit residential complex, such as an apartment building, this subsection treats the builder/landlord as having made a taxable supply of the entire complex at the time the first unit is rented out or, if the builder is an individual, occupied by the builder. The builder is required to remit GST on the fair market value of the complex as of that time. Where units are rented out before the complex is substantially complete, the self-supply rule applies at the time of substantial completion.

Subsection 191(4) Self-supply of addition to multiple unit residential complex

This subsection applies the self-supply rule to the case of an addition to an existing multiple unit residential complex. An example would be where a new floor or wing is added to an existing apartment building. As under subsection 191(3), the self-supply rule would apply at the later of the time any unit in the addition is first occupied and the time when the addition is substantially completed. The builder/landlord becomes liable for GST on the fair market value of the addition at that time.

Subsection 191(5) Exception for personal use

The rules in subsections (1) to (4) do not apply where the builder is an individual and where, after the complex is substantially completed, it is used primarily as the builder's place of residence (or that of another individual who is either related to, or is a former spouse of, the builder), provided that the builder did not claim any input tax credits in respect of the complex. This rule treats such builders the same as individuals who self-build their own homes and who are not classed as builders under the GST (and therefore are not subject to the self-supply rules). It should be noted that builders that supply their own residences may be eligible to claim a rebate of tax under Section 256 if the complex is for use as their primary residence.

Subsection 191(6) Exception for university residence

This subsection provides that the self-supply rules in subsections (1) to (4) do not apply in respect of the construction by a school, public college or university of a student residence, or addition thereto.

Subsection 191(7) Remote work site

This subsection applies where a registrant acquires, constructs or substantially renovates a new residential complex, or an additional thereto, for the accommodation of officers or employees at a special work site at which, because of the remoteness of the work site, these individuals could not reasonably be expected to establish and maintain a self-contained domestic establishment.

As under the Income Tax Act, the provision of accommodation at the remote work site is viewed simply as an additional cost of doing business. As such, where a registrant elects under this subsection, subsections (1) to (4) do not apply when the residential complex is first occupied. Any GST liability incurred by a registrant related to the purchase, construction or substantial renovation of a residential complex at a remote work site generally will qualify for input tax credits in the normal manner.

The subsection provides that, where an election has been made by a registrant, the self-supply rules in subsections (1) to (4) apply at such time as the unit is leased primarily to persons who are not officers or employees of the registrant.

Where the accommodation is sold, the sale is taxable unless the registrant had earlier paid tax under the self-supply rules.

Subsection 191(8) Form and manner of election

This subsection requires that the election referred to in subsection 191(7) be made in the prescribed form and be filed by the registrant before the residential complex, or the addition thereto, is substantially completed.

Subsection 191(9) Substantial completion

Notwithstanding the fact that a newly-constructed or substantially renovated multiple unit residential complex, condominium complex or a newly constructed addition to a multiple unit residential complex may not be substantially completed, for purposes of the self-supply rules in subsections 191(1) to (4), the construction or renovation is treated as having been substantially completed when 90 per cent or more of the residential units therein are occupied after the construction or renovation is begun.

Section 192 Non-substantial renovation

This section deals with the situation where a person, such as a real estate developer, in the course of a business of making supplies of real property, acquires, renovates and resupplies a residential complex, but the renovation is not a substantial renovation as defined in subsection 123(1). In this circumstance, the person is treated as having made a taxable supply for consideration equal to the total of all non-taxable costs attributable to the renovation (other than financing costs and the original cost of purchasing the complex) that would be included in determining the adjusted cost base of the complex for purposes of the Income Tax Act if the complex were capital property of the person. The supply is considered to have been made at the earlier of the time the renovation is substantially completed and the time ownership of the complex is transferred. In addition, the person is treated as having collected, at that time, tax in respect of the supply calculated on the total of all such costs. Thus, a developer would be required to remit GST on labour costs involved in renovating a residential complex which the developer acquired for resupply by way of sale or lease. However, under this provision, no tax would apply to costs (such as materials and contracted services) on which the GST already had been paid.

The rule provided in this section applies only to renovation costs and not to ordinary repair and maintenance costs that would not be included in the building's capital cost for income tax purposes.

Real Property Credits

Section 193

Where a registrant makes a taxable sale of real property, the provisions contained in section 193 enable the registrant to claim at the time of sale, an input tax credit for previously non-creditable tax paid by the registrant in respect of the property. In essence, these provisions ensure that the property is not effectively subject to double tax.

Subsection 193(1) Sale of real property

This subsection does not apply to public sector bodies unless the body is a financial institution or has made an election under section 211 to treat its otherwise exempt supplies of real property as taxable supplies.

Under subsection 193(1), where a registrant makes a taxable sale of real property (other than a sale considered to have been made under subsection 206(5) or 207(2) as a result of the change of use of the property) that was used as capital property in the registrant's commercial activities, the registrant is able to claim an input tax credit for any tax paid on the property that had not previously qualified for an input tax credit (e.g., where the property had been partly used in exempt activities). The amount claimable is calculated by multiplying the proportion of non-commercial use of the property by the lesser of:

(i) the tax payable in respect of the purchase of the property (or, the tax payable pursuant to section 191 (on a self-supply) or subsections 206(4), 207(1) or 211(2) as a result of the change of use of the property), plus any tax paid in respect of subsequent improvements, less any rebates to which the registrant was entitled (a public sector body may have been entitled to a rebate of tax paid on the acquisition of the property under section 259), and

(ii) the tax collectible by the registrant in respect of the sale of the property.

For example, assume a registrant purchased a building for $300,000, (plus $21,000 of GST) and commenced to use 40 per cent of the building in commercial activities (e.g., as commercial office space for lease) and 60 per cent in exempt activities. At the time of purchase, the registrant could claim an input tax credit of $8,400 (i.e. 40 per cent of $21,000). If the building were later resold, tax would be charged and, in respect of the portion used in exempt activities, the registrant could, under subsection 193(1), claim an input tax credit of $12,600 (i.e. 60 per cent of $21,000) -- the balance of the tax paid on the purchase that did not qualify for an input tax credit.

For subsection 193(1) to apply, the sale of the real property must be a taxable supply. For example, assume a registrant that is an accountant purchases a new house that is primarily used as the accountant's residence but also contains an office used to receive clients. The accountant would pay tax on the house and would not be eligible to claim an input tax credit at the time of purchase. The resale of the house would be an exempt supply. Therefore, subsection 193(1) would not apply to allow the registrant at the time of sale to claim a credit of the tax paid on the original acquisition of the house.

Subsections 193(2) and (3) Sale by public sector bodies

Subsection 193(2) applies to a registrant that falls within the definition of "government" in section 123 (including certain federal Crown corporations) or a public service body that has elected, under section 211, to treat its otherwise exempt supplies of real property as taxable supplies. The subsection deals with the situation where such a registrant makes a taxable sale (other than a sale considered to have been made under section 210), of real property that was not being used primarily in the registrant's commercial activities. Under the rules applicable to public sector bodies, no input tax credit could previously have been claimed in respect of the acquisition of the property. This subsection permits the registrant to claim an input tax credit at the time of sale equal to the lesser of:

(a) the total tax payable in respect of the acquisition of the property (or tax payable on a previous deemed disposition of the property due to a change in its use), plus any tax paid on subsequent improvements to the property, less any rebates to which the registrant was entitled; and

(b) the tax collectible on the sale.

(For an illustration of the application of this subsection, see the commentary on sections 209 to 211.)

Subsection 193(3) provides that subsection (2) does not apply to a registrant that is a financial institution.

Statement as to Use of Real Property

Section 194 Incorrect statement

Certain supplies of real property, such as a used residential complex, will be exempt from the GST (see Part I of Schedule V). This section deals with the situation where a supplier makes a taxable sale of real property and incorrectly states or certifies, in writing, to the recipient that the supply was an exempt supply. In this case, unless the recipient knew or should have known the supply was not exempt, the tax payable in respect of the supply is determined as the tax fraction of that consideration and the supplier is considered to have collected -- and the recipient considered to have paid -- that tax on the day on which beneficial ownership or possession of the property was transferred to the recipient. As a consequence, the vendor is required to remit the tax and the recipient, if a registrant, is entitled to an input tax credit to the extent that the property is for use in a commercial activity.

Subdivision d

Capital Property

Section 195 Prescribed property

For purposes of determining an input tax credit in respect of capital property, different rules apply depending on whether the property is personal property or real property. In the case of personal property (e.g. machinery), an input tax credit may be claimed only if the property is for use primarily in a commercial activity. In the case of real property (e.g., a building), an input tax credit may be claimed proportional to the extent of use in commercial activities. Should the situation arise where there is some doubt as to whether certain property should be classified as personal property or real property (e.g., a machine to be permanently affixed to real property), section 195 provides authority to clarify the status of such property by regulation.

Section 196 Intended and actual use

The input tax credit that a registrant is entitled to claim at the time property is acquired is to be determined on the basis of the registrant's intentions, at that time, as to the use to which the property will be put. This section provides that, for the purpose of the capital property rules, property is treated as having been used for the intended purpose when acquired. Consequently, to the extent that the property is actually used for some other purpose, the change-of-use rules apply.

Section 197 Insignificant changes

This section provides that insignificant changes in use of capital properties are not to be treated as a change of use for GST purposes. An insignificant change for this purpose is defined in subsection 197(2) as a change that is less than 10% of the total use. Therefore, a change of use that is less than 10% of the total use of a capital property will generally not result in a deemed disposition or acquisition of the property under the change-in-use rules. Excluded from the definition of insignificant change, however, are changes in use from primarily for one purpose to primarily for another purpose. Thus the change of use rules would apply on a change from use of capital property primarily in a commercial activity to use primarily in a non-commercial activity (for example in the making of exempt health care services) even where the use changed by less than 10%. Note that in determining whether a change in use is insignificant, previous insignificant changes that did not trigger the application of any of the change in use rules are, in effect, accumulated under subsection (1). For example, a 6% increase in use in a commercial activity would not be considered insignificant where it has been preceded by a 5% increase in use.

Section 198 Use in supply of financial service

This section provides that where a registrant, other than a financial institution as defined in section 149, provides exempt financial services related to its commercial activities, any capital property used in the provision of those services is to be attributed to the commercial activities. Thus, there is no requirement for a non-financial institution to apportion the tax payable on capital properties that are used in commercial activities and in the provision of related financial services. This simplifies the operation of the tax for non-financial institutions.

Capital Personal Property

Subsection 199(1) Application

Section 199 sets forth a series of rules for registrants governing input tax credits for the GST paid or payable on the acquisition or improvement of capital property other than real property. These rules reduce the number of instances where an input tax credit in respect of capital property must be apportioned. Subsection 199(1) provides that these rules do not apply to a financial institution (defined in section 149) or to a passenger vehicle or aircraft that is a capital property of a partnership or self-employed individual. (The rules for passenger vehicles and aircraft are described in the commentary on section 201.)

Subsection 199(2) Acquisition of capital personal property

Subsection 199(2) provides that a registrant may claim an input tax credit in respect of tax payable on the acquisition or importation of personal property only if it is to be used as capital property primarily (more than 50%) in commercial activities of the registrant. If the capital personal property is acquired primarily for use in commercial activities, the registrant is considered under this subsection to use the property exclusively in such activities and, accordingly, is allowed to claim a full input tax credit. Where such property is not used primarily in commercial activities, an input tax credit may not be claimed.

The "primary-use" test distinguishes the treatment of capital personal property from that of non-capital and real property inputs. In the latter cases, the input tax for which credit may be claimed is proportional to the extent that the property is acquired for use in commercial activities.

While a primary-use for capital personal property is appropriate for the vast majority of registrants, in the case of financial institutions, special rules apply. These may be found in sections 204 and 205.

Subsection 199(3) Change of use of capital personal property

Where a registrant (other than a financial institution -- see sections 204 and 205) owns capital personal property and commences at any time to use it in commercial activities, the registrant is considered by this subsection to have received, immediately before that time, a supply of the property for such use and to have paid tax in respect of the supply. Thus, where the use of a particular property in commercial activities increases to the extent that the "primary-use" test is met, the registrant is treated as having then acquired the property and paid the tax. As a consequence, the registrant is able to claim an input tax credit. The amount of tax that the registrant is considered to have paid is equal to the lesser of

> (i) the total tax payable in respect of the original purchase of the property and any subsequent improvements thereto (or, where there has previously been a deemed disposition of the property due to a decrease in commercial use, any tax payable as a result), and
>
> (ii) the tax that would be payable if the registrant were to acquire the property at the time of the change in use at its fair market value.

Of course, if no GST was ever payable on the property -- if, for example, it was acquired before the introduction of the GST -- no input tax credit will be available when the use of the asset changes.

The change-of-use rule for capital personal property differs from the general rule for real property. Under subsection 206(3), an increase in use of capital real property in commercial activities results in an input tax credit proportional to the increase in use, calculated on the lesser of the tax payable on the acquisition of the property and subsequent improvements thereto, and the tax that would be payable if the property were to be acquired at its fair market value at the time of the increase in use.

Subsection 199(4) Improvement to capital personal property

This subsection deals with improvements to capital personal property. It allows an input tax credit to be claimed by a registrant in respect of the tax on an improvement to such property only if the property is used primarily in commercial activities immediately after the property is improved. Subsection 123(1) provides a definition of the term "improvement" in relation to capital property.

Subsection 199(5) Use of musical instrument

For the purposes of determining any entitlement to, or recapture of, an input tax credit, a musical instrument owned and used by an individual who is a registrant, if also used in employment or in the business of a partnership of which the individual is a member, is to be treated as being used in commercial activities. Thus, a GST-registered musician who uses a musical instrument 40% as an employee and 25% in the course of a commercial activity (for example, as a self-employed musician), will be treated as using the instrument primarily in a commercial activity and will, therefore, be entitled to claim a full input tax credit for any tax paid on the purchase of the instrument.

It should be noted that a musician who is not a registrant and who uses a musical instrument strictly to earn employment income is entitled to claim a GST rebate under the rules provided in section 253 of the Act.

Section 200 Application

This section sets out the general rules applicable to a sale or cessation of use of capital personal property used by a registrant in commercial activities. This rule does not apply to capital personal property of a financial institution or to a passenger vehicle or aircraft held as capital personal property by an individual or partnership.

Under subsection 200(2), a self-supply rule applies where a registrant ceases to use capital personal property primarily in commercial activities. Under this rule, the property is treated as having been sold at that time at its fair market value. The registrant is treated as having collected tax at that time based on that value. For example, assume that a registrant, having acquired a capital personal property, ceases, when the property has a value of $1,000, to use the property primarily in commercial activities. In this case, the registrant is considered to have sold the property for $1,000 and as having collected tax of $70. This amount would then be included in the amount of net tax required to be remitted for the reporting period in which the property no longer satisfied the primary-use test. In this circumstance the registrant would have been entitled to an input tax credit for any tax paid on the acquisition of the property.

Under subsection 200(3), any subsequent actual sale of the property by the registrant is considered not to be a taxable supply and therefore has no GST consequences.

Sections 201, 202 and 203 Passenger vehicles and aircraft

These sections set out special rules applicable to passenger vehicles and aircraft that are capital properties of a registrant.

Sections 201 and 202 Value of passenger vehicle

In the case of a passenger vehicle acquired by a registrant for use as a capital property in commercial activities, no input tax credit is allowed in respect of the GST payable on the cost of the vehicle (and any improvements thereto) in excess of the amount that is the capital cost of the vehicle for the purposes of the Income Tax Act. (The Minister of Finance has announced that, for the purposes of paragraph 13(7)(g) of that Act, as of September 1, 1989 the maximum capital cost of a passenger vehicle for tax purposes is increased to $24,000. It was further announced that, as of January 1, 1991 on implementation of the GST, the limit would be determined without reference to federal and provincial sales taxes.)

Sections 202 Input tax credit on passenger vehicle or aircraft

Subsections 202(2) and (3) provide that an individual or partnership may not claim an input tax credit in respect of a passenger vehicle or aircraft, or any improvement thereto, unless the vehicle or aircraft is for use exclusively in commercial activities. (Note that by reason of the definition in subsection 123(1) of "exclusive", this test is satisfied if all or substantially all -- 90% or more -- of the use is in commercial activities.) Where the use in commercial activities by the individual or partnership is less than exclusive, the allowable input tax credit is to be determined under subsection 202(4) by reference to the capital cost allowance deducted in respect of the vehicle or aircraft under the Income Tax Act. This is achieved by treating the tax on such property as having become payable in the last reporting period commencing in the registrant's taxation year (for income tax purposes) in which the vehicle or aircraft was purchased. The tax payable at that time is to be determined by multiplying the tax fraction (7/107ths) by the capital cost allowance (CCA) deducted for income tax purposes in respect of the vehicle or aircraft in calculating the income of the registrant for the year.

The application of this rule may be illustrated by way of an example. Assume that a GST-registered individual reporting on a quarterly basis has a business (i.e., a commercial activity) with a fiscal year ending March 31st each year. Assume further that the individual acquires, in March 1992, a passenger vehicle for $18,000 (including GST). The vehicle is used 60% in business and 40% for personal use. The individual would be allowed to claim a capital cost allowance of $1,620 in his or her personal income tax return for 1992 (1/2 X 30% X 60% X $18,000). In filing the GST return for the last quarter of 1992, the individual would claim an input tax credit of $105.98 (i.e., 7/107th of $1,620). The individual would also be entitled to claim an input tax credit with respect to the vehicle in subsequent taxation years calculated by reference to the capital cost allowance claimed in those years.

The rule in subsection 202(4) described above applies only where GST was payable on the acquisition of the passenger vehicle or aircraft. Subsection 202(5) provides that, where the self-supply rule in subsection 203(2) treats a GST-registered individual or partnership as previously having made a taxable supply of a passenger vehicle or aircraft (when the vehicle or aircraft ceased to be used exclusively in a commercial activity), the registrant is also treated for the purposes of subsection 202(4) as having acquired the vehicle or aircraft and as having paid tax on it. The practical consequence is that the individual or partnership is entitled to claim a CCA-based input tax credit under subsection 202(4).

The CCA-based input tax credit simplifies the operation of the tax for self-employed individuals and partnerships as it avoids the need for these persons to track changes in the use of vehicles and aircraft that are acquired partly for commercial use and partly for non-commercial use. Moreover, it enables them to claim a credit even where the vehicle or aircraft is not primarily (i.e., at least 50 per cent) for use in a commercial activity -- the normal rules for capital goods would deny any input tax credit in this circumstance.

Section 203 Passenger vehicles and aircraft - sales and reductions in use

This section sets out the rules that are applicable on the sale or reduction in use of a passenger vehicle or aircraft.

Subsections 203(1) and (3) Sale of passenger vehicle

The rule in subsection 203(1) applies where a registrant makes a taxable sale of a passenger vehicle that was being used as capital property in commercial activities. It provides that the registrant may claim an input tax credit for the portion of the tax paid on the acquisition or improvement of the vehicle that had not previously been claimed as a credit. This ensures that there is no cascading of the tax when the vehicle is resold. The input tax credit which may be claimed when the vehicle is sold is a function of the tax paid by the registrant on the vehicle, any input tax credit claimed, the cost of the vehicle including improvements, and the sale price received by the registrant. The input tax credit which may be claimed when the vehicle is sold is equal to the lesser of

(i) the amount by which the tax payable on the purchase of the vehicle and on the cost of any improvements thereto exceeds the input tax credits claimable prior to the sale, and

(ii) where the sale price is less than the purchase price plus the cost of improvements, the amount of the excess under (i) reduced proportionate to the ratio of the sale price over the purchase price and the cost of improvements.

For example, assume that a corporation acquires a passenger vehicle in 1992 for $50,000 (excluding taxes) for use exclusively in its commercial activities, and that it sells the vehicle in December 1994 for $30,000. The corporation would have paid tax of $3,500 on the purchase and for its reporting period in which the vehicle was acquired it would have been entitled to claim an input tax credit of $1,680 -- that is, 7% of $24,000 (the maximum tax-excluded purchase price that will be allowed for a passenger vehicle under section 201).

On the sale in 1994, the corporation would be required to collect tax of $2,100 (7% of the $30,000 sale price) and be entitled to claim a further input tax credit equal to the lesser of:

- $1,820 (the tax payable on the purchase less the input tax credit in respect thereof) under paragraph 203(1)(a), and
- $1,092 (the amount determined under paragraph 203(1)(a) reduced in proportion to the ratio of the sale price to the purchase price -- that is $1,820 X (30,000/50,000)) under paragraph 203(1)(b).

The total credits in respect of the $3,500 of tax paid would thus be $2,772 (i.e., $1,680 when purchased, plus $1,092 on resale). The $728 in input tax credits which, in effect, is denied to the corporation represents tax paid on the purchase price of the vehicle in excess of the ceiling, to the extent that the corporation has "used up" the value of the vehicle.

Subsection 203(3) provides that, in the case where a registrant that is an individual or partnership sells a passenger vehicle or aircraft which was not used exclusively in commercial activities, GST does not apply to the sale. This avoids cascading of tax since, in these circumstances, the registrant would not have been entitled to claim a full input tax credit for tax paid on the acquisition of the vehicle or aircraft.

Subsection 203(2) Ceasing to use passenger vehicle and aircraft

This subsection applies where a registrant who is an individual or partnership ceases to use a passenger vehicle or aircraft exclusively in commercial activities. In this case, the registrant is treated as having made a taxable sale of the vehicle or aircraft at its fair market value and as having collected tax on the supply. This rule effectively recaptures any input tax credits previously claimed in respect of the vehicle or aircraft. Should the vehicle or aircraft be used thereafter by the registrant in commercial activities (but less than exclusively), the registrant may claim an input tax credit in respect of the vehicle based on the capital cost allowance for income tax purposes under the rules provided in section 202.

Sections 204 and 205 Capital personal property of financial institutions

Under the general rules set out in section 199, a full input tax credit in respect of capital personal property may be claimed where such property is used primarily in commercial activities of a registrant. Otherwise, an input tax credit may not be claimed in respect of the acquisition of the property. Change-of-use rules apply where the property begins or ceases to be used primarily in commercial activities. These general rules do not apply to financial institutions (defined under section 149). Rather, a financial institution is allowed to claim input tax credits in respect of capital personal property, on a prorated basis, to the extent that the property is used in the institution's commercial activities.

Sections 204 and 205 provide that change-of-use rules for capital real property also apply to capital personal property of a financial institution. However, capital personal property of a financial institution which costs less than $50,000 is not subject to the change-of-use rules.

An exception is provided in subsection 205(3). Where a registrant has made an election under subsection 150(1) to have transactions with other members of a closely related group treated as exempt supplies and, as a result of making that election, the registrant ceases to use the property in commercial activities, or reduces the use of the property in commercial activities, the change-of-use rules contained in subsections 193(1) and 206(4) and (5) apply to all capital personal property without reference to the $50,000 threshold.

Subsection 205(4) provides that subsection 205(3) applies only to personal property owned by the registrant at the time the election under subsection 150(1) becomes effective.

Capital Real Property

Sections 206, 207 and 208 Acquisition and change-of-use of capital real property

These sections deal with changes in the commercial use of capital real property. The ordinary rules for determining input tax credits in respect of tax payable on the acquisition of real property are set out in section 169. It should be noted that, by virtue of sections 204, 205 and subsection 150(1), the rules under section 206 pertaining to real property also apply to certain personal property that is capital property of a financial institution. These rules do not apply to an individual or a public sector body that is not a financial institution.

Subsection 206(1) Real property - application

This subsection provides that the rules in section 206 do not apply to individuals or public sector bodies that are not financial institutions. However, where a public service body makes an election under section 211 to have its otherwise exempt supplies of real property treated as taxable supplies, the general change-of-use rules in section 206 apply to that property.

Subsection 206(2) Deemed acquisition of capital real property

This subsection applies where a registrant was unable to claim an input tax credit for tax payable on real property when the property was acquired (or converted exclusively to non-commercial use) and subsequently commences to use the property as capital property in commercial activities. In these circumstances, at the time the property is converted to commercial use, the registrant is treated as having repurchased the property, and, except where the property is exempt (e.g., a used residential complex) the registrant is considered to have paid GST on the property at that time.

The notional amount of GST that the registrant is considered to have paid is equal to the lesser of:

- the total tax payable in respect of the acquisition of the property (or the tax payable where the registrant was previously treated as having made a supply of the property under subsection (4) or 211(2) due to a change of its use), plus tax on subsequent improvements thereto, less any rebates in respect of the property to which the registrant was entitled (for example, where the registrant is a public service body that was entitled to a rebate of tax payable on the purchase under section 259), and
- the amount of tax that would be payable if the property were acquired at its fair market value at that time.

The effect of this provision is that where the property is to be used exclusively in commercial activities, the registrant is able to claim an input tax credit equal to the lesser of the total tax paid on the property that had not yet been recovered and the tax on the fair market value of the property at the time. Where the property is to be used only partly in commercial activities, the input tax credit is prorated.

The following example illustrates the application of this rule. Assume that a GST-registered partnership of medical practitioners acquires a new building for $200,000 (plus $14,000 GST) in which the practitioners' offices are to be located. Since the building is not for use in a "commercial activity" (the supply of medical services is an exempt supply), no input tax credit would be claimed at the time of acquisition. Assume that half of the building is subsequently converted to commercial office space for rental purposes. At the time of conversion, the fair market value of the building is $300,000. In this case, the partnership would be treated as having paid tax equal to $14,000 -- that is, the lesser of $14,000 (the tax paid on the original acquisition) and $21,000 (7% of $300,000). Since half of the building is now used in a commercial activity, the partnership would be entitled under the rules in subsection 169(2) to claim an input tax credit of $7,000 (i.e., 50 per cent of $14,000). This amount would be claimed for the reporting period in which the building commenced to be used in the commercial activity.

Subsection 206(3) Increase in use of capital real property

Subsection 206(3) applies where a registrant increases the commercial use of real property. In this case, the registrant is treated as having received a supply of the portion of the property that is now to be used in commercial activities. Except where the supply is an exempt supply (e.g., a used residential complex), the registrant is then considered to have paid tax on the supply and is thereby entitled to claim an input tax credit.

The tax in respect of which an input tax credit may be claimed is proportional to the percentage increase in the property's use in commercial activities. It is calculated as that percentage increase (based on the total use of the property) multiplied by the lesser of:

- the total tax payable in respect of the acquisition of the property (or the tax that would have been payable had the registrant not acquired the property as part of a non-taxable sale of a going concern or the tax payable where the registrant was previously treated as having made a supply of the property under subsection (4) or 211(2) due to a change of use) and any tax payable in respect of subsequent improvements, less any rebates in respect of the property to which the registrant was entitled, and

- the tax that would be payable if the property were acquired at its fair market value at that time.

To illustrate, consider the example cited under subsection 206(2) above. Suppose the partnership in that example converts a further 20 percent of the building to commercial use when its fair market value is $400,000. The partnership could claim an input tax credit of $2,800 (i.e. 20 percent of $14,000). Note that, under this rule, once commercial use is increased to 90 per cent or more, it is considered to have been increased to 100 per cent (given the definition of "exclusive" in section 123). Therefore, in this example, if the partnership instead increased commercial use by 40 per cent to a total of 90 per cent, an input tax credit of $7,000 (i.e., 50 per cent of $14,000) could be claimed.

Subsection 206(4) Change of use of capital real property

Subsection 206(4) applies where a registrant had acquired real property for use as capital real property in commercial activities and begins to use it exclusively (90 per cent or more) for non-commercial purposes. Where the property was being used entirely in commercial activities immediately before the change of use, the registrant is treated as having sold the property and, therefore, is required to pay tax on its full fair market value.

If the property was not being used entirely in commercial activities immediately before the change of use, the registrant would pay tax only on that proportion of the fair market value equal to the percentage use of the property in commercial activities. On the remainder of the property that was not used in commercial activities (and for which an input tax credit would not have been claimed), the registrant would pay no additional net tax. Where that non-commercial portion was a residential complex (e.g., an apartment tower), the supply of it would be an exempt supply and therefore would not be subject to tax under this subsection. Where the supply of the non-commercial portion was not an exempt supply, there still would be no net tax payable on that portion. This would be achieved in two steps. First, under subsection 206(4), the registrant would be treated as having collected tax on that portion equal to the lesser of

(i) the total tax previously payable on that part of the property and any improvements thereto, and

(ii) the tax that would apply if that part of the property were sold at its fair market value.

Secondly, under subsection 193(1), the registrant would be entitled to claim an exactly offsetting input tax credit. The result is that the registrant would have to remit tax only on the fair market value of the portion of the property that had been used in commercial activities immediately before the change of use.

If the registrant subsequently resold the property and the resale was a taxable supply, the tax paid under this subsection could be claimed under subsection 193(1) as an input tax credit at the time of sale. This ensures that, when property is sold on a taxable basis, the supplier receives a credit for all tax previously paid in respect of the property.

To illustrate the application of subsection 206(4), again consider the example cited under subsection (2). Suppose that the 50 per cent commercial use of the building in that example is reduced to zero when the fair market value of the building is $500,000. The partnership would remit GST of $17,500 (50 per cent of 7% of $500,000). On the 50 per cent non-commercial use, the GST liability of $7,000 (50 per cent of $14,000) would be offset by an input tax credit of the same amount under subsection 193(1).

Subsection 206(5) Idem

This subsection applies where the use of capital real property in commercial activities is reduced but does not cease altogether. In this case, the registrant is treated as having sold part of the property, proportionate to the reduction in use, and as having collected tax equal to the lesser of:

(i) the tax that would apply if that part of the property were sold at its fair market value, and

(ii) the total tax previously payable on that part of the property.

To illustrate, again consider the example in subsection (2). Suppose that the 50 per cent commercial use is reduced to 30 per cent when the fair market value of the building is $500,000. The partnership would remit GST of $2,800 (i.e. 20 per cent of $14,000). That is, the partnership would be "repaying" the input tax credit it had originally claimed.

Subsections 207(1) and (2) Change in use of real property

Subsection 207(1) applies where a GST-registered individual ceases to use real property in commercial activities or begins to use the property primarily for the individual's (or a related individual's) personal use or enjoyment. Subsection 207(2) applies where an individual only reduces (but does not eliminate) the use of real property in commercial activities, without commencing to use the property primarily for personal use or enjoyment. The rules set out in these subsections parallel those contained in subsections 206(4) and (5) for registrants that are not individuals. A key difference is that, where the change of use involves the conversion of real property (that is not a residential complex) from commercial use to the personal use or enjoyment of the individual (or a related individual), subsection 190(2) also imposes tax on the fair market value of the property to the extent that it is so converted. To prevent double taxation, the tax payable by virtue of that subsection is deducted in the formula set out in subsections 207(1) and (2). The result is that there is in no additional tax payable under those subsections where subsection 190(2) applies.

Subsection 208(1) Acquisition of capital real property by individual

This subsection provides that a registrant that is an individual is not able to claim an input tax credit in respect of real property acquired primarily for the personal use or enjoyment of the individual or any individual related thereto even if the property is partly used as capital property in commercial activities. Thus, there is no apportionment of tax where less than one-half of a personal residence is used as an office. However, the individual is able to claim an input tax where the commercial use of the property is its primary use or the individual subsequently changes the use of the property so that subsection 208(2) applies.

Subsection 208(2) Commencement of use in commercial activities

By reason of this subsection, a GST-registered individual is entitled to claim an input tax credit when he or she commences to use real property in commercial activities as long as the property is not primarily for the personal use or enjoyment of that individual, or any related individual. The registrant is treated as having received a supply of the property and as having paid tax for which an input tax credit may then be claimed.

The notional amount of tax in respect of which an input tax credit may be claimed is calculated in a similar way as under subsection 206(2) in the case of a change of use of property owned by non-individuals. In most cases (except where real property values have declined), the commencement of use of capital real property in commercial activities results in an input tax credit proportional to that use, calculated on the tax previously paid on the original cost of the property and any improvements thereto.

Subsection 208(3) Increase in use of capital real property

This subsection applies where an individual has acquired real property for use as capital property in commercial activities (and not primarily for personal use or enjoyment) and increases the use in those activities. The rule in this subsection is similar to that described in the commentary on the preceding subsection. The practical effect is that the registrant becomes entitled to claim an input tax credit. The tax in respect of which the credit may be claimed is the lesser of

> (i) the total tax payable in respect of the acquisition of the property (or the tax that would have been payable had the registrant not acquired the property as part of a non-taxable sale of a going concern or the tax payable where the registrant was previously treated has having made a supply of the property due to a change of its use) and any tax payable in respect of subsequent improvements, and
>
> (ii) the tax that would be payable if the registrant were to acquire the property at its fair market value at the time its use in commercial activities increases.

In most cases (except where the real property has declined in value), an increase in the extent of use in commercial activities results in an input tax credit proportional to the percentage increase in use, calculated on the tax previously payable on the original cost of the property and any improvements thereto. Note that an increase in commercial use to 90 per cent or more is treated as an increase to 100 per cent commercial use.

Subsection 208(4) Improvement to capital real property by individual

This subsection provides that a registrant who is an individual may not claim an input tax credit in respect of any GST paid or payable on the cost of improvements to capital real property if the property is primarily for the personal use or enjoyment of the individual, or any related individual, immediately after it is improved. The term "improvement" in this context is defined in subsection 123(1) of the Act.

Sections 209, 210 and 211

These sections deal with the application of the GST to real property acquired for use as capital property by a registrant that is a public sector body other than a financial institution. (Public sector bodies that are financial institutions are treated, for the purposes of the GST, like all other financial institutions.)

Sections 209 and 210 provide that a public sector body may claim an input tax credit in respect of real property, or improvements thereto, only if the property is primarily for use in commercial activities. Change-of-use rules apply only when the use of the property changes from primarily commercial to primarily non-commercial and vice versa.

Most sales and rentals of real property by public sector bodies other than governments are exempt. Section 211 permits such bodies to elect to have their otherwise exempt supplies of real property treated as taxable supplies.

Subsection 209(1) Acquisition of capital real property by public sector body

This subsection provides that a public sector body may claim an input tax credit on the acquisition of real property only where the property is for use primarily in commercial activities. Where this threshold test is met, the use in commercial activities is treated as "exclusive", thereby allowing a full input tax credit. The result is that these registrants are not required to apportion their input tax credits in respect of capital real property acquisitions. This treatment is the same as that provided under section 199 with respect to capital personal property.

Subsection 209(2) Improvement to real property by public sector body

Under this subsection, an improvement to capital real property of a public sector body is treated the same as the capital real property to which it relates. Thus, a public sector body is entitled to claim a full input tax credit in respect of the GST paid on the cost of an improvement to real property where, immediately after the improvement, the real property is used primarily in commercial activities.

Subsection 209(3) Change in use of real property by public sector body

As noted above, a public sector body is entitled to claim an input tax credit in respect of capital real property only where the property is for use primarily in commercial activities. Where this test is not satisfied, no input tax credit is allowed.

Read in conjunction with the rules in subsection 199(3), subsection 209(3) provides that, at the time when the commercial use of previously acquired capital real property increases to the point where it is used primarily in commercial activities, a full input tax credit may be claimed. The amount of tax that would qualify for an input tax credit at that time is the lesser of

(i) the total tax payable in respect of the purchase of the property (or the tax payable on a previous deemed disposition of the property due to a change in its use) and in respect of any subsequent improvements to the property, less any rebates in respect of the property to which the body may have been entitled, and

(ii) the tax that would be payable if the public sector body were to acquire the property at its fair market value at that time.

Subsection 210(1) Ceasing to use capital real property by public sector bodies

This subsection provides that, where a public sector body ceases or decreases the use of real property in commercial activities, subsection 200(2) applies. In effect, capital real property of public sector bodies is treated in the same manner as capital personal property of most other registrants. The "primary-use" test applies to such real property. Thus, a decrease in the commercial use of such property from, for example, 80% to 60%, or 40% to 20%, has no GST consequences. Rather, only where the use of real capital property by a public sector body decreases from primarily commercial to primarily non-commercial is the public sector body treated as having sold the property for fair market value at the time of this change in use.

This gives rise to a liability to remit the GST on the fair market value of the property.

Subsection 210(2) Sale of capital real property by public service bodies

Where a public service body (i.e., a municipality, hospital, charity, non-profit organization or certain educational institutions) decreases the use of capital real property to the point where it is no longer used primarily in commercial activities, under subsection 200(2), tax is considered to have been collected at the time of the change in use. Subsection 210(2) provides that in such a case, subsection 200(3) applies to any subsequent actual sale by the public service body, with the result that the subsequent sale is not a taxable supply. Therefore, no GST consequences will arise at the time of the subsequent sale.

Subsection 211(1) Election respecting real property

Most sales and rentals of real property by public service bodies are exempt under section 25 of Part VI of Schedule V to the Act.

This subsection permits a public service body to elect, on a property-by-property basis, to have the rules in subsection 193(1) and section 206 apply to particular real property (and to have sections 209 and 210 not apply). The effect of this election in respect of particular property is that subsequent sales or commercial rentals of the property would not be exempt while the election is in effect (since the property is specifically excluded from exemption under section 25 of Part VI of Schedule V to the Act). It also means that input tax credits in respect of the property are pro-rated according to its actual use in commercial activities. This election would be advantageous where a public service body owns real property that is leased to persons for use in commercial activities and could obtain an input tax credit for the GST on their rental payments.

Subsection 211(2) Deemed sale where election

Where an election in respect of real property is made by a public service body under subsection (1), the body is treated as having sold and repurchased the property. It is also treated as having collected tax on the sale equal to the lesser of:

(i) the tax that was previously payable on the property; and

(ii) the tax that would be payable if the property were acquired at its fair market value at that time.

To prevent double taxation of the property, the body is able to claim an input tax credit in respect of any unrecovered tax previously paid on the initial acquisition of the property. Finally, the public service body is entitled to claim an input tax credit in respect of the tax payable under this subsection on the deemed sale proportionate to the commercial use of the property.

To illustrate the application of this provision, assume a charity purchases a $200,000 building (on which it pays $14,000 GST) primarily for use as its head office in supplying exempt services. It would not be entitled to claim an input tax credit at that time. However, under section 259, it would be entitled to a rebate of half the tax paid (i.e., $7,000). Assume that, subsequently, the charity decides to use 60% of the building in commercial activities (e.g., in leasing office space) and makes an election under section 211. Assume that at that time, the fair market value of the building is $250,000.

At the time the charity is treated as having made a taxable sale of the building, it could claim an input tax credit of $7,000 (i.e., the unrecovered tax paid on the original acquisition of the property). The tax payable by the charity on its deemed reacquisition of the building under subsection 211(2) would be $14,000 (i.e., 7% of $200,000). Of that tax, the charity could then claim $8,400 as an input tax credit (i.e., 60% of $14,000). Before making the election under subsection (1), the charity was able to recover only half the tax originally paid on the building; that is, $7,000. Upon making the election, it is entitled to recover more than half -- $8,400 in this example -- for a net recovery of tax of $1,400.

As long as the election remains in effect, the tax consequences of selling, leasing or changing the use of the property follow the normal rules that apply to commercial owners of real property.

Subsection 211(4) Deemed sale where revocation

Where an election under subsection (2) is revoked, the registrant is treated as selling the property for fair market value and is required to pay tax on that value. The registrant would then be subject to the rules in section 209 and 210 to determine whether an input tax credit could be claimed.

Subsection 211(5) Manner and form of election or revocation

This subsection requires that the election and notice of revocation be made in the prescribed form, specifying the real property covered by the election or revocation and be filed with the Minister in prescribed manner within one month after the end of the reporting period in which the election or revocation becomes effective.

Division III

Tax on Importation of Goods

This Division deals with the application of the GST to goods imported into Canada. In essence, the tax is payable at the same time as customs duties are payable on an importation and, in general, the laws of customs apply to the importation. If the person paying the tax on an importation of goods is a GST registrant, the tax under Division III may be included in determining the input tax credit entitlements of the registrant under the same conditions as if the tax were payable under Division II on purchases of goods from sources in Canada.

Section 212 Imposition of tax

This section provides that every person who is liable under the Customs Act to pay duty on goods imported into Canada (or would be so liable if the goods were subject to duty) is required to pay GST on the goods imported. The rate of tax is 7 per cent of the value of the goods -- the same rate applicable to supplies made in Canada (see section 165).

Section 213 Exception

This section provides that tax imposed under Division III is not payable on importations of goods included in Schedule VII (non-taxable importations). The principle items included in that Schedule are zero-rated prescription drugs, medical devices, basic groceries, agricultural and fishery products and goods acquired for diplomats and certain international organizations.

Section 214 Payment of tax

This section provides that the GST imposed on imported goods is to be paid and collected under the Customs Act (including related interest, fees, charges and penalties) as if the tax were duty levied under the Customs Tariff on imported goods.

Subsection 215(1) Value of goods imported

This section provides that GST is to be calculated on the excise-and-duty-paid value of goods imported into Canada. More specifically, that value is the aggregate of the value as determined in accordance with sections 45 to 55 of the Customs Act, the amount of any customs duties payable on the goods under the Customs Tariff, duty under the Special Import Measures Act and the amount of taxes (other than the goods and services tax), if any, payable under the Excise Tax Act.

Subsection 215(2) Idem

This subsection provides that in the case of certain importations of goods prescribed by regulations, the value of the goods may be determined in a manner prescribed in those regulations. An example would be goods of a prescribed class imported on a temporary entry basis where the value of the goods, for purposes of the application of any duty and tax, is determined on, say, a 1/60th valuation basis.

Subsection 216(1) Meaning of "officer"

The administration of the GST on imported goods under Division III triggers the application of certain provisions of the Customs Act. Therefore, subsection 216(1) provides that, in the administration of Division III, the expression "officer" has the same meaning as in section 2 of the Customs Act and includes an officer employed in the administration of Part IX of the Excise Tax Act.

Subsection 216(2) Application of provisions of Customs Act

Where the value of imported goods (as determined by an officer for purposes of Division III) is in dispute, subsection 216(2) provides that sections 58 to 66 of the Customs Act are to apply as if the determination were a determination made under subsection 58(1) of that Act.

Subsection 216(3) Appeal on value only

Where, for purposes of Division III, the Deputy Minister of National Revenue for Customs and Excise has made a decision relating to the value of an importation of goods under section 63 or 64 of the Customs Act and a person disagrees with the decision, that person may appeal there from. In that event, sections 67 to 69 of the Customs Act apply (with such modifications as the circumstances require). Only the issue of value can be the subject of such an appeal.

Subsection 216(4) Other appeals

This subsection provides that where the issue of disagreement relates to any matter other than a determination of value for purposes of Division III, a person may apply for a rebate of GST in accordance with section 261 of the Excise Tax Act. The appeal procedures relating to GST (sections 301 to 312) apply to any dispute as to the amount of the rebate.

Division IV

Tax on Imported Taxable Supplies Other than Goods

Division IV of the legislation applies in the case of importations into Canada of services and intangible personal property (e.g. intellectual property rights). Its purpose is to require persons to self-assess and remit tax on these importations where they are for use in Canada otherwise than exclusively in the course of a commercial activity of the recipient.

Section 217 Definitions

This section includes definitions of terms that apply only to Division IV of the Act, namely:

"imported taxable supply" This expression refers to the imported supplies that are subject to tax under Division IV. These include taxable supplies of personal property such as intellectual property rights, as well as services, received by a person resident in Canada for the resident's personal use in Canada or for consumption, use or resupply by that person in the making of an exempt supply. To avoid double taxation of the same supply, paragraphs (a) and (b) provide an exception for supplies that are subject to tax under Division II or III. Also excluded are zero-rated supplies and goods enumerated in Schedule VII (non-taxable importations). It should be noted that, by virtue of the definition of imported taxable supply, exempt supplies such as financial services are implicitly excluded from the self-assessment imposed in this division.

"reporting period" This term defines the period for reporting the tax payable by the recipient of imported taxable supplies. If the recipient is already a GST registrant, the Division IV tax payable is to be reported at the same time as the recipient reports the tax payable under Division II. If the recipient is not a registrant, the recipient's reporting period is the calendar quarter.

Section 218 Imposition of tax

Subsection 218(1) imposes a liability to pay tax on every recipient of an imported taxable supply. The tax is calculated on the value of the consideration for the supply at a rate of 7 per cent -- the same rate as is imposed under Division II on taxable supplies made in Canada. By virtue of the definition of "imported taxable supply" contained in section 217, the Division IV tax is payable where the importation is for use by the recipient in Canada otherwise than exclusively in the course of a commercial activity.

Subsection 218(2) provides that the tax imposed under Division IV is payable by the recipient on the earlier of the day on which the consideration is paid and the day on which the consideration for the supply becomes due. For this purpose, Section 152 sets out rules to determine when consideration is considered to become due.

To the extent that an imported taxable supply is for use in a commercial activity, the tax payable thereon gives rise to an input tax credit in the normal manner under section 169.

Section 219 Returns and remittance of tax

In the case of imported taxable supplies, the tax imposed under section 218 is payable by the recipient in Canada. Under subsection 219(1), each person liable to pay tax imposed by Division IV is required to prepare a return in respect of imported taxable supplies received in the reporting period in which tax became payable by that person.

Subsection 219(2) sets out the requirements respecting the filing of returns and remittance of tax payable under Division IV. Each return is to be filed with the Minister and the tax payable, as accounted for in the return, remitted to the Receiver General. The return and the tax payment for the reporting period of the taxpayer must be filed not later than

a) in the case where the taxpayer is a registrant having a taxation period that is the fiscal year of the registrant, the day that is 3 months after the end of the reporting period, and

b) in any other case, the day that is one month after the end of the reporting period covered by the return.

Section 220 Supplies between branches

This section provides a special rule for transactions between a permanent establishment in Canada of a person and a permanent establishment of that person outside Canada. It provides that a transfer of personal property or rendering of a service between such establishments is treated as a supply, with the consideration therefor being the amount used for purposes of calculating the income of the establishment for the purposes of the Income Tax Act. Thus, for example, if a foreign corporation allocates certain head office expenses to its Canadian branch, the amount deductible in respect of those expenses in calculating the branch income for income tax purposes is treated as being the consideration for the supply.

Division V

Collection and Remittance of Division II Tax

Subdivision a

Collection

Subsection 221(1) Collection of tax

As set out in section 165, every recipient of a taxable supply, other than a zero-rated supply, is required to pay tax on the value of the consideration for the supply. Subsection 221(1) requires the person making the taxable supply to collect the GST payable thereon from the recipient of the supply as an agent for Her Majesty in right of Canada. In most cases, a person making taxable supplies is a GST registrant, although this is not always the case. One exception to the requirement to collect tax on a taxable supply made by a person is where the person is a small supplier who is not a registrant (see section 166).

Subsection 221(2) Exception -- non-resident supplier of real property

Subsection 221(2) sets out additional exceptions to the obligation for suppliers to collect tax in the case of the following sales of real property:

- all sales by non-residents;
- all sales of non-residential property to persons registered for GST purposes;
- sales of residential property to persons registered for GST purposes, other than individuals; and
- sales to prescribed registrants.

In these circumstances, the tax payable in respect of the supply is required under subsection 228(4) to be remitted by the recipient directly to the Receiver General.

Subsections 221(3) and (4) Exception -- export shipments

Subsection 221(3) applies where a carrier of property has been provided with a declaration by a shipper that property is being shipped for export, but the property is, in fact, not exported. In these circumstances, the carrier's services do not qualify for zero-rating. However, the carrier is not required to collect the tax in respect of the carrier's supply if the carrier did not know or could not reasonably be expected to know that the property would be diverted to a Canadian destination. However, the recipient of the carrier's services remains liable for the tax.

Section 222 Amounts collected held in trust

This section provides that amounts collected by a person as or on account of tax under Division II (supplies made in Canada) are considered to be held in trust for Her Majesty in Right of Canada except in the case of a bankruptcy of the person. However, authority is provided to deduct from the trust monies so held an amount of any input tax credit or deduction from net tax which the person is entitled to claim.

Subsection 223(1) Disclosure of tax

Since the GST is payable by the recipient of a supply, it is important for the recipient to know that the supply is taxable. Where the supply is made to another registrant, sufficient information is to be provided to enable the recipient to claim any input tax credit to which the recipient may be entitled. Provisions relating specifically to supplies between registrants may be found in subsections 169(4) and 223(2).

Subsection 223(1) sets out a requirement for registrants to provide sufficient information to their customers -- whether those customers are final consumers or other registrants -- to enable them to ascertain whether they have satisfied their GST liabilities on any supplies received. Two methods of satisfying this requirement are set out explicitly in subsection 223(1):

- indicate clearly on any invoices or receipts issued to customers the net-of-tax price and the GST thereon; or
- if prices are on a tax-included basis, to note this on invoices or receipts issued to customers.

Circumstances will exist, particularly at the start-up of the GST, where it will be difficult for some vendors to indicate the tax on invoices or receipts issued to customers -- either because the vendor does not yet have the necessary point-of-sale equipment to do so or because it is not the vendor's usual practice to issue receipts except on request (e.g., in the case of taxi fares). Therefore, subsection 223(1) also provides that other methods of presenting tax may be prescribed by regulation. For example, signs prominently displayed in a vendor's place of business may be used to indicate to customers that the prices of taxable products are on a tax-included basis. This avoids the need for small businesses to make immediate changes in their cash registers or accounting systems while, at the same time, ensuring that consumers know that when they pay consideration that includes tax for a product or service they have also discharged any liability they my have to pay GST on that amount.

Subsection 223(2) Particulars

This provision imposes an obligation on a person making taxable supplies to provide, on demand by a registrant receiving such a supply, particulars of the transaction sufficient to support a claim for an input tax credit.

As indicated in the Goods and Services Tax Technical Paper, the government believes that the model presentation of the GST by retailers has two key components:

- the amount of tax on cash register receipts should be separately identified, thereby ensuring that consumers have a tangible record of the amount of GST paid on purchases; and
- prices within stores (e.g., shelf prices) should incorporate the GST, so that consumers are aware of the GST-included price of purchases before they proceed to the check-out counter. Where vendors choose to incorporate the GST in their shelf prices, this fact should be clearly indicated.

Understandably, however, not all firms will be able to adopt this model presentation of the GST, at least not initially, because of the technological constraints imposed by many existing cash registers. These constraints will make it difficult for many retailers to identify two separate sales taxes -- the provincial retail taxes and the GST -- in cash register receipts. Over time, as retailers upgrade their cash registers or introduce bar code scanning systems, it will become feasible to identify the GST on register receipts. To facilitate this process, a 100 per cent capital cost allowance is available for firms purchasing eligible electronic point-of-sale equipment and related inventory control systems prior to 1993. In addition, the government will provide retailers that price their products on a tax-included basis with appropriate signs to indicate this fact to consumers. In addition, as of December 19, 1989, electronic point-of-sale equipment and related inventory control systems are exempt from the manufacturers' sales tax. The legislative amendments to give effect to this exemption are contained in clause 17 of Bill C-62.

Section 224 Right of supplier to sue for tax remitted

Where a supplier has remitted GST collectible from, but as yet unpaid by, a recipient and the supplier has satisfied the disclosure requirements under subsection 223(1), this section states that the supplier has a right to sue the recipient for the unpaid tax as if it were a debt owed to the supplier.

Subdivision b

Remittance of tax

Sections 225 to 237 Remittance of tax

These sections deal with the remittance of tax by registrants. Subdivision a of Division II deals with the imposition of tax on taxable supplies made in Canada by a supplier, while subdivision b of Division II deals with the input tax credits claimable by a registrant in respect of tax paid or payable on supplies received or imported by the registrant for use, consumption or resupply in the course of commercial activities. Sections 225 to 237 deal with the remittance of net tax owing to the Receiver General or, where input tax credits exceed the tax collected, the refund of net tax payable by the Minister of National Revenue to the registrant.

Subsection 225(1) Net tax

This subsection defines the "net tax" of a registrant for a reporting period. For each tax reporting period, registrants are required to report the total of all amounts that were collected or became collectible in the period by the registrant as or on account of tax imposed under Division II, plus all other amounts required to be added to net tax for the period (such as a refund of tax from a supplier). Registrants are entitled to claim in the return for the period the total of all input tax credits for tax paid or payable in that or a preceding period, as well as all other amounts that may be deducted for that tax for the period (for example, any deduction for bad debts written off). The difference between these two totals is the "net tax" of the registrant for the reporting period. This may be a positive or a negative amount. Sections 228 and 229 provide that the net tax, if positive, is required to be remitted to the Receiver General and, if negative, is refundable to the registrant.

Subsection 225(2) Restriction

This subsection provides that any GST reported as tax collectible or collected in a previous reporting period or any addition to net tax of a previous period is not to be included in a return for any later reporting period. This is to prevent double-counting.

Subsection 225(3) Input tax credit restriction

This subsection provides that a particular amount claimed as an input tax credit or a deduction from net tax in a return for one reporting period may not be claimed again in the return for any subsequent reporting period. The subsection also provides that an amount otherwise qualifying in a particular period as an input tax credit may not be claimed if, before the end of the period, the amount became refundable or was remitted to the registrant under some other provision or pursuant to any other Act of Parliament.

Subsection 225(4) Input tax credit limitation

Consistent with the provisions under the existing federal manufacturers' sales tax, this subsection allows up to four years for a registrant to claim an input tax credit. The four year period commences on the day on or before which the return for the particular reporting period in which the credit could first have been claimed was required to be filed.

Subsection 225(5) Restriction on input tax credit in respect of real property

In certain circumstances set out in Part I of Schedule V to the Act, the supply of a residential complex is exempt as long as the supplier has not claimed an input tax credit in respect of the complex. This subsection provides that, once such an exempt supply is made, the supplier cannot subsequently claim the credit.

Section 226 Net tax of non-registrant

In certain circumstances, persons who are not required to be registered for GST purposes are nevertheless required to collect tax in respect of taxable sales of real property. For example, a doctor who provides only exempt medical services would not be engaged in a commercial activity and therefore would not be a GST registrant. However, if the doctor sells a building used exclusively in the doctor's medical practice, to another unregistered practitioner, the sale would be taxable and the doctor would be responsible for collecting the tax thereon from the recipient. This section provides that the supplier in these circumstances is required to file a return accounting for the tax and remit the tax to the Receiver General in the same manner as would a registrant.

Section 227 Election for streamlined accounting method

Compliance with GST should be straightforward for registrants making only taxable purchases and taxable sales. These vendors are able to calculate the GST collected on their sales directly from existing invoices or cash register tapes. The calculation of the GST on sales should also be relatively straightforward for businesses making both taxable and zero-rated sales if they have moderately sophisticated cash registers.

However, the interaction of GST and provincial sales taxes could increase complexity at the check-out counter for small retailers who do not have sophisticated point-of-sale equipment -- particularly those selling a combination of taxable goods and zero-rated basic groceries.

To address this issue, section 227 provides authority to allow for streamlined accounting by prescribed registrants or registrants of a prescribed class. As noted in the Goods and Services Tax Technical Paper, streamlined accounting will be available to independent retailers selling both taxable goods and zero-rated basic groceries whose sales do not exceed $2 million annually. As a transitional measure until 1993, streamlined accounting will also be available to independent retailers with sales of both taxable goods and basic groceries between $2 million and $6 million annually as well as to separate retail establishments of a registrant with sales of these items less than $2 million annually. Registrants using streamlined accounting will not need to distinguish between their sales of taxable goods and zero-rated goods at the check-out counter. Rather, under streamlined accounting, registrants will be permitted to use an estimate of the tax collected or collectible in a reporting period (rather than the actual amount of tax collected or collectible) in order to determine the net tax for the purposes of subsection 225(1). The method(s) of estimating the GST on sales are to be prescribed in regulations.

Section 227 also requires that the registrant file an election in order to use streamlined accounting. The election is to be filed with the Minister of National Revenue in the prescribed form and set out the day -- which must be the first day of a reporting period of the registrant -- on which the election is to become effective. An election to use streamlined accounting must be filed on or before the last day for filing the registrant's return for the first reporting period in which the election is in effect. Where the registrant files on an annual basis, the election must be made by the first day of the registrant's second fiscal quarter in the year in which the election takes effect.

Under subsection 227(3), an election for streamlined accounting ceases to have effect on the earlier of the last day of the registrant's reporting period in which the establishment ceases to qualify as a prescribed retail establishment and the last day of the reporting period in which the registrant files a revocation of the election with the Minister.

Subsection 227(4) provides that, once an election ceases to have effect on the last day of a registrant's reporting period, the net tax of the registrant is to be determined in a prescribed manner. This will allow for any adjustment that may be required as a result of the transition from streamlined accounting to the normal rules for determining the GST on taxable supplies.

In addition to streamlined accounting, other measures are available to businesses to assist them in the transition period and to ease their GST compliance burdens. Section 346 provides for a one-time credit to smaller businesses of up to $1000 to help offset the cost of switching to the GST system. As well, clause 17 of Bill 62 contains legislative provisions to exempt from the manufacturer's sales tax cash registers and electronic bar-code scanning equipment with the capability of calculating and recording sales tax imposed by at least two levels of government. This is in addition to the measure previously announced to provide an accelerated write-off under the Income Tax Act for similar equipment purchased prior to 1993.

Section 228 Calculation, remittance and refund of net tax

Subsection 228(1) provides that a registrant required to file a GST return is to report in the return the net tax for the registrant's reporting period covered by the return. Where the registrant's net tax is a positive amount, that amount is to be remitted not later than the last day for filing the return in question. Where the registrant's net tax is negative for the period covered by the return, the return serves as an application to the Minister of National Revenue to pay the negative amount as a refund.

Subsection 228(4) deals with tax payable on the purchase of real property from a person who, under subsection 221(2), is not required to collect tax on the sale (see the commentary in subsection 221(2)). In this case, the purchaser is required to remit any tax payable on the purchase directly to the Receiver General -- not to the supplier of the real property -- and to file a return in the prescribed form, with the Minister. If the purchaser is a registrant who acquired the property for use or supply primarily in the course of commercial activities, the return is to be filed at the same time as the registrant's regular return for the reporting period in which the sale occurs. In all other cases, the return is due on or before the last day of the month following the month in which any tax became payable.

Subsection 228(5) requires a non-registered person who has collected any Division II tax or was obliged to collect amounts of Division II tax in the reporting period of the person -- see subsection 245(1) -- to remit such tax to the Receiver General. The tax remittance must be made on or before the day the person's return covering the particular reporting period is required to be filed under subsection 238(3).

Subsection 228(6) provides a mechanism to allow an offset against the tax remittable by a person of any net tax refund or any rebate claimed by that person in another return. To qualify for the offset, the two returns must be filed together. This avoids the circumstance in which a person entitled to a refund or rebate on one return is nevertheless required to remit tax owing on another return and await the receipt of the refund or credit until the first return has been processed.

Subsection 228(7) provides authority for rules to be set out in the regulations that would allow the tax payable at any time by a person to be offset by the amount of any GST refund or rebate which another person is entitled to recover. It is contemplated that these rules would apply as between closely related persons and then only if the returns for such persons are filed together.

Section 229 Payment of net tax refund

This section deals with the payment by the Minister of National Revenue of a net tax refund to a registrant pursuant to subsection 228(3). It requires the Minister to pay the refund to the registrant with all due dispatch after the registrant's return has been filed. However, the refund is not to be paid unless the registrant has filed all required returns up to that time.

Provision is also made in this section for payment of interest at a prescribed rate on outstanding refund claims. Interest is to be calculated from the day that is the later of 21 days from the time the return claiming the refund was received by the Minister and the day on which all requirements respecting filing of preceding returns are fulfilled, to the day payment is sent to the registrant. Interest of less than $1 is not payable.

Section 230 Refund of overpayment

This section provides that, where the total amount remitted by a person on account of net tax for a period exceeds the actual net tax for the period, the person is entitled to a refund of the excess amount (for example, where an annual filer's total quarterly instalments exceed actual net tax for the year). The refund of an overpayment is subject to the same condition regarding the filing of previous returns as applies in the case of net tax refunds under section 229.

Section 231 Bad debts

This section deals with the treatment of bad debts. Where, in respect of an arm's length taxable supply on which the registrant has remitted tax collectible on the supply (other than a zero-rated supply) the registrant subsequently writes off all or part of the consideration for that supply as a bad debt, subsection 231(1) allows the supplier to claim an input tax credit equal to 7/107ths of the amount written off.

Businesses either may collect their account receivables using internal sources or they may perform this activity through a wholly-owned subsidiary. In order to ensure that bad debts are treated similarly in both situations, subsection 231(2) provides that where a listed financial institution, that is a member of a closely related group, purchases a receivable at face value and on a non-recourse basis from another member of the group, that financial institution can claim an input tax credit for a bad debt in respect of these accounts, to the extent the other member could have done so under subsection 231(1).

Subsection 231(3) requires that in respect of any part of the bad debt subsequently recovered by the supplier, 7/107ths of the amount recovered will be considered to be GST and remittable as such.

Section 232 Refund or adjustment of tax

This section provides for a refund to a customer or an adjustment by a supplier of Division II tax collected in excess of the Division II tax properly collectible. Subsection 232(1) provides that a registered supplier has up to four years from the end of the reporting period in which the excess amount in question was charged or collected in order to make the refund or adjustment.

Subsection 232(2) applies where there has been a reduction in the consideration on which Division II tax had been charged or collected (e.g., an after-the-fact volume discount or allowance). A registered supplier in this situation is allowed to adjust the tax amount charged to reflect the price reduction. Where tax had been collected on the supply, the registrant is allowed to refund or credit the excess tax to the recipient. The registrant is given up to four years after the end of the reporting period in which the consideration for the supply is reduced in order to make the adjustment.

Subsection 232(3) requires the supplier to issue a credit note to the recipient of the supply where that supplier makes an adjustment, refund or credit of tax in respect of a supply to the recipient. Where the tax refunded or credited has already been remitted by the supplier as part of the supplier's net tax for the period or a preceding reporting period, the supplier is allowed to deduct such amount in determining the net tax for the period in which the credit note is issued. Conversely, the recipient of the credit note is to add the tax amount so refunded or credited in determining the net tax of the recipient for the reporting period in which the credit note is issued to the extent the tax amount in question had previously been deducted in calculating the recipient's net tax.

Subsection (4) provides that this section does not apply where section 161 applies. Consequently, where a recipient of a supply takes advantage of a prompt payment discount offered by the supplier, there will be no GST consequences for which a credit note is required. As well, this subsection does not apply to an exchange of a used good under circumstances that entitle the person acquiring the used good to a notional input tax credit under section 176.

Section 233 Patronage dividends

Members of a co-operative often receive patronage dividends, usually after the end of the co-operative's fiscal year, based on the volume of members' purchases from or sales to the co-operative and results of the operations of the co-operative. Conceptually, patronage dividends should be treated in a manner similar to other price adjustments to individual customers. However, because patronage dividends under the GST are often in respect of a mixture of both taxable and zero-rated supplies made to a variety of customers over the course of a year, it is often impractical to treat patronage dividends as individual price adjustments to each member, although some co-operatives do have sufficiently sophisticated record-keeping systems to do so.

Under subsection 233(2), the co-operative has a choice of treating its patronage dividends either as individual price and tax adjustments to each member or as aggregate price and tax adjustments. Where the co-operative chooses the latter, it will determine the portion of each dividend that is considered to include a tax adjustment on the basis of the portion of its total taxable supplies (other than sales of capital properties), in the immediately preceding fiscal year, that were non-zero-rated supplies. This is the portion determined under subsection (1) and referred to as the "specified amount". Alternatively, the co-operative may, under paragraph (2)(a), elect to determine the actual portion of each dividend to individual customers that includes a tax adjustment. In either case, the amount determined under paragraph 233(2)(a) is treated as an adjustment to which the rules in subsection 232(2) apply. As a result, the co-operative is able to deduct, from its net tax for the reporting period in which the dividend is paid, 7/107ths of the appropriate portion of the dividend. The recipient, if a registrant who acquired the supplies from the co-operative for use in commercial activities, adds the same amount to net tax for the recipient's reporting period in which the dividend was paid.

Under subsection 233(3), a co-operative may elect to ignore patronage dividends altogether for GST purposes. Under this election, co-operatives will not treat patronage dividends as price adjustments and will not be entitled to any deduction in respect thereof in determining their net tax. Similarly, customers who are registrants will not be required to remit GST in respect of dividends received. This election to ignore patronage dividends altogether may be attractive to a co-operative where all of its members are registrants as it will simplify compliance while leaving unaffected the combined net tax liabilities of both the co-operative and its members.

Section 234 Deduction where rebate paid

Where an individual is entitled to a rebate, under subsection 254(2), of tax paid on new residential housing, the supplier of the property may, under subsection 254(4), pay or credit to or in favour of the individual the amount of the rebate at the time of the sale of the property. Section 234 then permits the supplier to deduct the same amount from the supplier's net tax for the reporting period in which the rebate was paid or credited. This facilitates the administration of the GST rebate for purchasers of new homes by ensuring that builders are able to deliver the benefit of the rebate directly to purchasers at the time of closing.

Section 235 Net tax where passenger vehicle leased

This section deals with the situation where a registrant leases a passenger vehicle. The GST paid or payable by a registrant in respect of a lease payment for a passenger vehicle is creditable in the normal manner under section 169. However, to the extent that the lease costs exceed the maximum lease costs that are deductible under the Income Tax Act (currently $650 per month), the input tax credits thereon are recaptured under this section at the end of the registrant's fiscal year. This parallels the restriction in section 201 for the maximum amount of the input tax credit allowed in respect of the tax on passenger vehicles costing more than $24,000. The recapture of the input tax credit for vehicles leased in a taxation year at a monthly cost exceeding $650 is provided in this section by way of an adjustment to the net tax determination for the last reporting period in that year if the registrant is an annual filer or ceases to be registered in that year or, in any other case, the first reporting period following the taxation year. It is only at this time that the income tax disallowance can be determined in many circumstances.

Section 236 Food, beverages and entertainment

This section parallels section 67.1 of the Income Tax Act. It is intended to limit the input tax credit that may be claimed in respect of the consideration payable for food, beverages or entertainment. Thus, in those circumstances where the deduction for income tax purposes of the cost of the food, beverages and entertainment is limited to 80% of the cost, only 80% of the GST qualifies for an input tax credit. However, to simplify the accounting, the full input tax credit may be claimed on meal and entertainment expenses throughout the fiscal year. At the end of the year, 20% of the total input tax credits claimed for meal and entertainment expenses is recaptured under section 236. This is done by adding the 20% recapture to net tax for the last reporting period in the year in the case of annual filers or persons who cease to be registrants in the year. In any other case, the recapture is added to net tax in the return for the first reporting period after that year. This enables registrants to calculate the input tax credit recapture at essentially the same time as they would normally calculate their meal and entertainment expense deductions for income tax purposes.

Section 237 Instalments

Section 237 specifies the rules relating to the payment of quarterly instalments by a registrant who has opted for annual filing. Generally, annual filing is available to registrants in a fiscal year where the value of the consideration for taxable supplies made by the registrant (and associated persons -- see section 249) in the immediately preceding fiscal year does not exceed $500,000 and the registrant has made the required election under section 248.

Subsection 237(1) Payment of instalments

Where the reporting period of a registrant is a fiscal year, subsection 237(1) requires the registrant to pay quarterly instalments to the Receiver General on or before the last day of each fiscal quarter. The amount of each instalment is 1/4 of the registrant's instalment base for that reporting period, as determined under subsection 237(2). Instalments are also payable for the special reporting period provided under subsection 248(3) where the threshold amount of the registrant on an annual basis exceeds the $500,000 limit.

Subsection 237(2) Instalment base

Subject to the special transitional measures provided under subsection 237(5), a registrant's instalment base for an annual reporting period is the lesser of

(a) the net tax for that period, and

(b) the net tax for all reporting periods of the registrant ending in the 12 month period immediately preceding the particular reporting period. (For this purpose where the preceding reporting period is more or less than 365 days, the net tax for that period is calculated on an annual basis. For example, if the net tax is $4,000 for the first fiscal year of 4 months of a registrant, the registrant's instalment base for the next year would be $12,000 (12/4 of $4,000). As a consequence, the registrant would be required to remit instalments for the next year of $3,000 at the end of each quarter (unless, of course, the registrant's net tax for the next period were less than $12,000).)

A registrant who anticipates a decline in net tax in the current year is permitted to base the current year's instalment payments on an estimate of the current year's net tax, rather than the actual amount of the preceding year's net tax. Providing that the registrant has not underestimated the current year's net tax, no penalty or interest is payable under subsection 280(2).

Where a registrant ceases to qualify for annual reporting at any time in a fiscal year and, as a result, is required under subsection 248(3) to have a reporting period shorter than 12 months, paragraph (a) provides that the net tax for the short reporting period is to be grossed-up to the equivalent amount for a 12-month period in order to determine the registrant's instalment base for that period.

Subsection 237(3) Minimum instalment base

Subsection 237(3) provides that where a registrant's instalment base for a reporting period is less than $1,000, it shall be deemed to be nil. Thus where net tax liability for a year is less than $1,000, the registrant is not required to pay instalments for that year or the subsequent year. However, the registrant is still required to file an annual return, along with any net tax owing.

Subsection 237(4) Negative net tax

Where the net tax for a reporting period of a registrant is negative, subsection 237(4) provides that the net tax is assumed to be nil for that reporting period for the purposes of determining the registrant's instalment base under subsection 237(2).

Subsection 237(5) Instalment base in transitional year

Subsection 237(5) provides a special transitional rule for determining a registrant's instalment base for a reporting period that begins before 1992. For such a reporting period, the registrant's instalment base is the lesser of

(a) 75% of the net tax for that period, and

(b) a percentage (to be prescribed by regulation) of the total consideration for supplies made by the registrant in the fiscal year of the registrant immediately preceding that reporting period, pro-rated or grossed-up, if necessary, to reflect a 365-day year. (The proceeds from the sale of capital property are not included in total consideration for this purpose.)

Subdivision c

Returns

Sections 238 and 239

These sections deal with the filing of GST returns by registrants. They also deal with non-registered persons who have made taxable supplies or who are considered to have made taxable supplies on which tax imposed under Division II was required to be collected by them in a particular reporting period.

Subsection 238(1) Filing required -- registrant

This subsection requires every registrant to file a return with the Minister for each reporting period of the registrant. Registrants are required to file a return within one month from the end of a reporting period, or, where the registrant is on an annual reporting basis, within 3 months from the end of the registrant's fiscal year. The reporting periods of registrants are determined under the rules set out in sections 245 to 251.

Subsection 238(2) Filing required -- non-registrant

This subsection requires every person who is not a registrant to file a return with the Minister of National Revenue for each reporting period of the person for the tax imposed by Division II on taxable supplies made by the person in the period. It also provides that the return is to be filed within one month after the end of the reporting period. Under section 245, the reporting period of a non-registrant is a calendar month except for listed financial institutions whose reporting period is the fiscal year of the institution unless the institution elects to file on a monthly or quarterly basis.

Subsection 238(3) Non-resident performers

This subsection deals specifically with the filing requirement imposed on a non-resident person who sells taxable admissions to a performance, exhibit, seminar, activity or event and who is not a registrant. As a non-registrant, the person's reporting period is a calendar month. The GST return for each month is to be filed not later than the end of the following month in respect of all amounts collectible or collected as tax by the person in the reporting period covered by the particular return. All amounts so collectible/collected are to be remitted by the person at that time. Where the person, or one or more of the person's employees involved in the activity, leaves Canada at a time when the time for filing a return has not yet expired, the return for that period is to be filed -- and tax remitted -- before the person leaves Canada.

Section 239 Separate branch returns

Section 239 provides flexibility for the filing of separate GST returns by the branches or divisions of an organization.

Subsection 239(1) and (2) Authority for separate returns

As a general rule, a registrant is required to file one GST return for each reporting period covering all the registrant's commercial activities in the period. However, certain corporations and other organizations may have divisions with distinct separate operations for which the registrant would prefer to file separate returns. Subsection 239(1) provides that the registrant may apply for authority to file separate returns in respect of two or more branches or divisions. Under subsection 239(2), where the Minister of National Revenue is satisfied that the divisions or branches have separate accounting systems, and are separately identifiable by virtue of their activities or locations, the Minister may provide written authority for the branches or divisions to file separate returns.

Subsections 239(3) and (4) Revocation of authorization

Subsection 239(3) permits the Minister to revoke an authorization granted under subsection (1) where the requirements set out in that subsection are no longer being met or the authorization is no longer needed. Under 239(4), the Minister of National Revenue is required to send a written notice of any such revocation made to the registrant and to specify the effective date thereof.

Subdivision d

Registration

Sections 240 to 242 Registration

Subdivision d of Division V sets out the registration requirements that apply to persons carrying on commercial activities in Canada. A person registered or required to be registered for GST purposes is referred to as a registrant.

Subsection 240(1),(2) Where registration required

Under these subsections, registration is mandatory in the case of a person engaged in a commercial activity in Canada except for:

- a person that is a small supplier (as defined in section 148);
- a person whose only commercial activity is the sale of real property otherwise than in the course of a business; and,
- a non-resident person who does not carry on any business in Canada.

Applications for registration are to be made to the Minister of National Revenue and be filed within 30 days of the day on which the applicant (if the applicant is not a small supplier) first makes a taxable supply in Canada.

Subsection 240(3) Registration permitted

This subsection provides that a person engaged in any commercial activity in Canada may apply to the Minister of National Revenue to be registered for GST purposes. This provision will be of particular relevance to small suppliers, who are not required to register under subsection 245(1), where they sell primarily to other registrants. A benefit of registration is that, as a registrant, a small supplier is able to claim input tax credits, thereby placing the small supplier making supplies to other registrants on an equal GST footing with larger competitors.

This subsection also permits a non-resident person who, in the ordinary course of business, solicits orders for the delivery of goods in Canada to apply to be registered even though those activities may technically not constitute the carrying on of a business in Canada. As a registrant, the non-resident would be required to account for the GST on the non-resident's taxable supplies in Canada, but would be entitled to claim an input tax credit for any taxes on purchases or importations of goods and services.

In addition, this subsection allows listed financial institutions resident in Canada to apply to be registered even though they may not be making any taxable supplies. Such an institution may choose to register to enable it to take advantage of the election, under section 150, to effectively exempt all leases and supplies of services made between it and a closely-related corporation.

Subsection 240(4) Non-resident suppliers

This subsection treats a non-resident person who in Canada solicits orders to supply prescribed goods sent by mail or courier to persons in Canada as being engaged in business in Canada. As such, the non-resident is required to register and collect GST on any taxable supplies made in Canada. In this regard, it should be noted that where such a non-resident mails or couriers goods such as magazines, books or periodicals to a person in Canada from a place outside Canada, subsection 143(2) treats those as being supplies made in Canada.

Subsection 240(5) Application for registration

This subsection provides that an application for registration shall be filed in prescribed form and manner.

Subsection 240(6) Security

In the case of an application for registration by a non-resident person who carries on a commercial activity in Canada and who does not have a permanent establishment in Canada (see the definition of "permanent establishment" in section 123 and section 132), security will have to be posted and maintained by that applicant in an amount and form satisfactory to the Minister. A non-resident person making taxable supplies in Canada to customers in Canada is required to register in order to obtain input tax credits for any GST paid or payable by the non-resident.

Section 241 Registration

This section provides authority to the Minister of National Revenue to issue a registration number to an applicant identifying the person as a registrant for GST purposes, along with written confirmation of the effective date of the registration.

Section 242 Cancellation of registration

This section deals with the cancellation of a registration. Under subsection 242(1), the Minister of National Revenue may cancel the registration of a person where the Minister is satisfied that the registration of the person is no longer required, after giving the person reasonable written notice of the cancellation. An example would be where the person goes out of business or otherwise ceases to carry on any commercial activity in Canada.

Subsection 242(2) requires the Minister to revoke the registration of a small supplier where the small supplier files a request in prescribed form and manner, provided the small supplier has been registered for a period of not less than one year. Such revocation is to be effective after the last day of the fiscal year of the supplier.

Subsection 242(3) provides that where the registration of a person is cancelled by the Minister, written notice is to be given to the person of the cancellation and its effective date.

Subdivision e

Fiscal Periods and Reporting Periods

Registrants are required to calculate their net GST remittance or refund on a periodic basis -- monthly, quarterly or annually, depending on sales volumes. Following each reporting period, pursuant to section 238, a registrant must file a GST return and, pursuant to section 228, remit the net tax owing, or claim a refund, in respect of all of the registrant's commercial activities.

Subdivision e of Division V sets out the rules to be used in determining a registrant's GST reporting period. It provides that, for reporting purposes, every registrant has a single fiscal year, which is divided into reporting periods in the case of monthly and quarterly filers. Registrants have the option of selecting either the calendar year as their fiscal year or, if it is more convenient, their fiscal period for income tax purposes. An individual or trust with two or more fiscal periods for income tax purposes is allowed to select any one of those fiscal periods as the fiscal year for GST purposes or, if the person so chooses, the calendar year.

Reporting periods are as follows:

- Monthly - registrants (other than listed financial institutions as defined in section 123) making annual taxable (including zero-rated) supplies greater than $6 million;

- Quarterly - registrants making annual taxable supplies of $6 million or less; and

- Annual - registrants making annual taxable supplies not exceeding $500,000 have the option of annual filing with quarterly instalments. Listed financial institutions that are registrants will file annually with quarterly instalments except where they have elected to file monthly or quarterly. (See section 237 for the rules relating to instalment payments under the annual filing option).

Section 243 Fiscal periods

Section 243 sets out the rules for determining the "fiscal quarter" and "fiscal month" of a person. These terms are relevant for the purposes of the rules in section 245 for determining reporting periods.

Subsections 243(1) and (2) provide that, where the fiscal year of a person is a calendar year, the fiscal quarter of the person is to be a calendar quarter and the fiscal month will be the calendar month.

Subsection 243(3) sets out rules for determining a person's fiscal quarter where the fiscal year is not a calendar year. Subsection 243(4) sets out corresponding rules for determining the fiscal months of a person that is reporting on a fiscal year basis.

Section 244 Election for fiscal year

This section permits a person to elect to have a fiscal year for GST purposes, that is different from the taxation year of the person for the purposes of the Income Tax Act.

Subsection 244(1) allows all persons to elect to have their fiscal year be the calendar year, effective on the first day of any calendar year. Subsection 244(2) specifically allows an individual or trust, whose fiscal period for the purposes of the Income Tax Act for a business differs from the individual's or the trust's taxation year under that Act, to elect to have the fiscal year for GST purposes coincide with the fiscal period of the business for income tax purposes. The election is effective on the first day of that fiscal period and, pursuant to subsection 244(4), is to be made in prescribed form and filed before the day that is one month after its effective date.

Subsection 244(3) provides, in effect, that an election to adopt a fiscal year for GST purposes is binding on the registrant for a period of at least one year. A registrant is allowed to revoke an election made under this section, effective on the first day of a taxation year (for income tax purposes), if that year commences more than one year after the election was made.

Subsection 244(4) provides that the election must be made in prescribed form and be filed before the day that is one month after the date on which the election is to take effect.

Reporting Periods

Section 245

This section sets out the general rules for determining the reporting period for which GST returns are required.

Subsection 245(1) provides that, for a person who is not a registrant, the calendar month is the reporting period. The exception is that, for listed financial institutions that are not registrants, the reporting period is the fiscal year of the institution unless it has made an election under section 247 to have a quarterly reporting period.

Subsection 245(2) establishes the reporting periods of registrants. A registrant's reporting period will depend on the registrant's threshold amounts determined under section 249. The threshold amount for a fiscal year or fiscal quarter is determined with reference to taxable (including zero-rated) supplies made in the preceding year or quarter, respectively. A registrant whose threshold amount for a fiscal year does not exceed $500,000 may elect to report on a fiscal year basis.

A registrant's reporting period at any time will be the fiscal month of the registrant if:

- the threshold amount for the fiscal year or quarter of the registrant that includes that time exceeds $6 million (except where the registrant is a listed financial institution),
- the registrant's previous reporting period was monthly and no election has been made under section 247 or 248 for a quarterly or annual reporting period, or
- an election by the registrant to file monthly returns remains in effect at that time.

Except for listed financial institutions, the reporting period of a registrant not on an annual or monthly reporting basis is the fiscal quarter.

In the case of a listed financial institution that is a registrant, the reporting period is the fiscal year of the institution even if its taxable supplies exceed $6 million. The ability to file on an annual basis significantly reduces the compliance burden on listed financial institutions which, due to their mix of taxable and exempt activities, are required to apportion their inputs for the purpose of claiming input tax credits. Unlike other registrants, financial institutions are required to track changes in the use of both capital personal property having a cost to the institution of over $50,000, and real property. This places an additional compliance burden on these institutions. Under annual filing, such changes in use need only be reported once a year. Like other annual filers, listed financial institutions that report on a fiscal year basis are required to remit quarterly tax instalments calculated in accordance with the rules in section 237.

Section 246 Election for fiscal month

Section 246 sets out the rules that permit persons who are reporting on a quarterly or annual basis to elect to file on a monthly basis.

Subsection 246(1) permits a person to elect to report on a fiscal month basis. In the case of a person already registered, the election must be made to take effect on the first day of the person's fiscal year. In the case of an applicant for registration, the election may be made to take effect on the day the applicant becomes a registrant. The ability to file monthly is of particular benefit to registrants engaged primarily in making export sales or other zero-rated supplies as it enables them to obtain an earlier refund of any input tax credits to which they may be entitled.

Subsection 246(2) provides an exception to the rule that an election to file monthly can be effective only on the first day of a fiscal year. The rule in this subsection applies where a person's reporting period had been the fiscal year but the person's threshold amount for the second or third fiscal quarter of the year exceeded $500,000. In this circumstance, the person's election to file annually would cease to have effect and the person would automatically revert to quarterly filing for the remainder of that year. However, in this case, the person may elect instead to adopt a monthly reporting period.

Subsection 246(3) provides that the election to file on a monthly basis will remain in effect until it is superseded by an election by the registrant under section 247 or 248 for quarterly or annual filing.

Rules relating to the election to file monthly are set out in section 250.

Section 247 Election for fiscal quarter

Subsection 247(1) permits an election for persons who previously elected to file monthly to revert to quarterly filing as long as they are under the $6 million threshold.

Subsection 247(2) specifies that an election for quarterly filing remains in effect until the earliest of the day a replacement election takes effect, the first day of the fiscal quarter for which the $6 million threshold amount is exceeded, and the first day of the person's fiscal year for which the $6 million threshold is exceeded. The rules for determining threshold amounts are set out in section 249.

Section 248 Election for fiscal year

Under subsection 248(1), a person is allowed to adopt a fiscal year for filing purposes if the total taxable supplies in the preceding year (i.e., the threshold amount for the current year) does not exceed $500,000. The rules for determining a person's threshold amount for this purpose are set out in section 249. An election for annual reporting under this section can only take effect on the first day of a fiscal year of a person who is a registrant or on the day on which the person becomes a registrant.

Subsection 248(2) specifies that an election for annual reporting remains in effect until the earliest of the day on which an election for quarterly or monthly filing takes effect, the first day of the first fiscal quarter of the person for which the $500,000 threshold amount is exceeded and, where the threshold amount of the person for a fiscal year exceeds $500,000, the first day of that fiscal year of the person.

Section 249 Threshold amount for fiscal year

This section provides the rules for determining a person's "threshold amount" for the purpose of establishing that person's reporting periods.

Subsection 249(1) Threshold amount for fiscal year

Subsection 249(1) sets out the formula for determining a person's threshold amount. For any fiscal year, it is calculated by reference to the total value of the consideration for taxable supplies (other than supplies of financial services and sales of capital real property) made by that person in the immediately preceding fiscal year. (Where the preceding fiscal year is less than 12 months, the value of consideration for that year will be established on an annual basis by multiplying that value by 365 over the number of days in that year.) In determining the threshold amount for a fiscal year of a particular person, that person's own taxable supplies in the preceding year is aggregated with those of other persons who were associated with the particular person (as defined in section 127) in that preceding year.
Where a new corporation is formed as a result of an amalgamation or the parent acquires all of the assets of a subsidiary, the taxable supplies of the predecessors or subsidiary are to be included in the threshold amount of the new corporation or parent (see sections 271 and 272).

Subsection 249(2) Threshold amount for fiscal quarter

Where a person's threshold amount for a fiscal quarter exceeds $6 million, there is a requirement under subsection 245 to report on a monthly basis starting for the first month in that quarter. In addition, where the threshold amount for a fiscal quarter of a person filing on an annual basis exceeds $500,000, that person is required under section 246 to report on a quarterly (or, if an election is so filed, a monthly) basis beginning the first month in that quarter.

Subsection 249(2) provides that, for a person who was not associated with any other person, the threshold amount for any fiscal quarter in a fiscal year is the total value of the consideration for taxable supplies (other than supplies of financial services and sales of capital real property) in all preceding fiscal quarters ending in that year. Where a particular person is associated with any other person at the beginning of a fiscal quarter, the value of the consideration for taxable supplies of that other person also must be taken into account to determine the threshold amount of the particular person.

Section 250 Form and filing of elections

This section sets out the administrative requirements governing the filing of elections relating to changes in reporting periods of a registrant.

Section 251 On becoming or ceasing to be a registrant

Section 251 sets out the rules relating to reporting periods where a person becomes or ceases to be a registrant.

Subsection 251(1) On becoming a registrant

This subsection deals with the establishment of a person's reporting period at the time the person becomes a registrant. A separate reporting period is established for the period that begins on the first day of the calendar month in which a person became a registrant and ends on the day immediately preceding that day. A separate reporting period then follows, commencing on the day the person became a registrant and ending on the last day of the person's first reporting period as a registrant according to the provisions of subsection 245(2).

As an example, assume that a corporation registers on April 10 and wants to file on a calendar month basis. The corporation would have a reporting period spanning April 1st to April 9th, followed by another reporting period spanning the period from April 10th to April 30th. However, the corporation generally would not be required to file a return for the first reporting period unless it otherwise had an obligation under subsection 238(2) to remit Division II tax for that period.

Subsection 251(2) On ceasing to be a registrant

Under this subsection, a separate reporting period of a person is established ending on the day before that on which the person ceased to be a registrant. In this circumstance, the person is required to file a return for that period within one month thereafter (or three months thereafter if the registrant's reporting period was a fiscal year). A return for the subsequent reporting period will be required only if the person has an obligation to remit tax for that period.

Division VI

Rebates

Sections 252 to 264 Rebates

These sections deal with rebates of tax imposed under Part IX of the Act. This Division includes provisions to rebate the GST paid on certain purchases by non-residents, including tourists visiting from other countries, certain employee and partner expenses, as well as rebates in respect of new housing, legal aid and purchases by charities, non-profit organizations, municipalities, schools, universities, colleges and hospitals.

Section 252 Non-resident rebate

Subsection 252(1) provides for a rebate of GST paid by a non-resident person on goods purchased in Canada and exported or taken by the person out of Canada within 60 days of purchase.

While foreign tourists are obvious beneficiaries of the non-resident rebate for goods purchased in Canada, it should be noted that subsection 252(1) also applies in the case of certain commercial exports. Most goods exported by non-residents for business use would be zero-rated at the time of sale as long as the conditions under section 1 of Part V (Exports) of the zero-rated supply Schedule are met. However, zero-rating is not provided where the goods are to be transported in Canada by means of the non-resident's own truck (or other vehicle not operated by a common carrier). In this circumstance, subsection 252(1) instead permits the non-resident to recover tax paid on the exported goods by way of a rebate.

The GST paid on alcohol and other excisable goods as well as used artwork and other specified tangible personal property (defined in subsection 123(1)) purchased for an amount exceeding the prescribed amount in respect of the property does not qualify for a rebate under subsection 252(1). As well, consumers are not entitled to a rebate of GST on motive fuels.

Subsections 252(2), (4) and (5) deal with rebate claims in respect of hotel, motel or similar short-term accommodation provided to a non-resident individual while in Canada.

The rebate is limited to 30 days accommodation per visit. The expression "short-term accommodation" is defined in subsection 123(1).

Under subsection 252(2), the non-resident individual is entitled to a rebate in respect of the accommodation, regardless of how the supply of the accommodation was arranged (e.g., the individual may have purchased it directly from a hotel or motel operator or as part of a tour package or convention) and whether it was the individual or another person who paid the tax on the accommodation. Furthermore, there is the flexibility for the rebate to be claimed by either the non-resident individual or a person such as a tour operator or convention organizer who purchased the accommodation and resupplied it to the individual.

If the non-resident individual files the rebate claim in respect of short-term accommodation and was required to pay tax on that accommodation (e.g., as a result of having purchased it directly or as part of a package sold by a GST registrant), the rebate is equal to the amount of tax so paid. If the individual pays tax on a combination of accommodation and other services (e.g., meals) and the accommodation portion cannot be broken out, subsection (4) provides that the amount of tax rebatable will be calculated in accordance with prescribed rules to be set out in the regulations.

If the non-resident individual files the rebate claim for accommodation but was not required to pay tax on the accommodation, (e.g., where the individual purchased the accommodation as part of a tour package from a non-resident tour operator), the individual can claim a rebate equal to a flat amount (to be prescribed by regulation) per night. Alternatively, if the person from whom the individual purchased the accommodation (e.g., the tour operator) paid tax on it and identifies the amount of that tax, the individual can claim a rebate of that amount.

Pursuant to subsection 252(5), a non-resident individual entitled to a rebate in respect of accommodation in Canada can assign his or her right to that rebate to a person who purchased the accommodation (separately or as part of a package) and resupplied it to the individual. For example, when purchasing a tour package that includes short-term accommodation in Canada from a Canadian or foreign tour operator, the non-resident individual could agree in writing that the rebate be paid to the tour operator instead of the individual. In this way, the tour operator could make allowance for the rebate in determining the price charged to the non-resident, thereby allowing the benefit of the rebate to be realized by the non-resident at the time of purchase. The amount rebatable to the person to whom the rebate is assigned (the "assignee") is the amount of tax paid by the non-resident individual (calculated in accordance with prescribed rules if the tax was paid on a combination of services) or, where the individual was not required to pay tax, either the amount of tax paid by the assignee in respect of the accommodation or the prescribed flat amount per night.

Subsection 252(3) sets out the general conditions for rebate claims under this section:

- the applicant must apply within one year after the supply of the goods or accommodation;

- the rebate claim must be for $20 or more, except where it is a rebate that is for accommodation and that has been assigned by a non-resident individual to the applicant;

- there may be only one claim filed in each calendar quarter in the case of individuals and in each month in the case of non-individuals. However, there is an exception to this rule in the case of prescribed applications. The government is currently examining the feasibility of administering the rebate program through duty-free shops. Should this prove to be viable, the flexibility has been provided to allow individuals to make applications in this manner more frequently than once every three months; and

- at the time the application is made, the individual, in the case of a rebate for accommodation, and the applicant in any other case, must be a non-resident person;

In the case of a rebate claim for GST paid on goods purchased in Canada, the applicant is also to provide evidence, satisfactory to the Minister of National Revenue, to substantiate that the goods were exported within 60 days of purchase.

Section 253 Employees and partners

Section 253 provides a rebate to certain employees for the tax on expenses for which the GST has been paid and which are deductible in computing the employee's income from employment for income tax purposes. Where the employee claims an income tax deduction for the capital cost allowance on an automobile, aircraft or musical instrument that is used in his or her employment and on which GST is payable, the employee is allowed to claim a rebate equal to 7/107ths of the amount of such allowance. This rebate is not available to an employee of a non-registrant or of a bank, trust company or other person listed in paragraph 149(1)(a) as a financial institution.

To illustrate, assume that a salesperson is entitled under paragraph 8(1)(f) and (j) of the Income Tax Act to deduct eligible taxable expenses of $2,500 and a capital cost allowance (CCA) of $3,000. Under section 253, the salesperson would be entitled to a GST rebate of $360 -- that is 7/107ths of $5,500. (For income tax purposes, the amount of the rebate relating to expenses deducted under paragraph 8(1)(f) of the Income Tax Act will be required to be included in the employee's income, while the amount in respect of the CCA will reduce the capital cost on which subsequent CCA deductions may be taken.)

Employees are given up to four years after the end of the year in respect of which claims relate to file their employee expense rebate claims.

The GST rebate under this section is also available to an individual who is a member of a GST-registered partnership in respect of expenses incurred outside the partnership that are deducted in computing the member's income from the partnership for the purposes of the Income Tax Act. However, an individual who is a member of a partnership is not entitled to claim a rebate to the extent that the expense relates to an activity that is not a commercial activity of the partnership. Thus, a doctor or dentist who is a member of a partnership providing exempt health care services would not be entitled to an input tax credit for the taxes on expenses incurred personally that relate to that partnership activity. The rule in subsection 253(2) limits the rebate payable to the partner to the amount that would qualify as an input tax credit if the expenses had been incurred, and the taxes thereon had been paid, by the partnership.

Sections 254 to 256 New housing rebates

Although the existing federal sales tax does not apply directly to sales of new homes, a substantial amount of sales tax is currently embodied in house costs. This tax burden results, in part, from the 9 per cent federal sales tax applied to building materials such as lumber, bricks, doors and windows, and the 13.5 per cent tax applied to other items such as paint and wallpaper. In addition, tax is paid at earlier stages in the production chain; that is, on items used to produce the building materials themselves and on tools and other capital goods used in the construction process. For the nation as a whole, the current effective federal sales tax rate on a newly-constructed house averages somewhat more than 4 per cent.

Under the GST, due to the input tax credit mechanism, no net GST is collected on building materials, supplies and other inputs used to produce a house. Instead, tax is applied directly to the sale of the newly-constructed house. Therefore, the value added in the construction process itself and the land component of new house prices forms part of the GST base. In the absence of any offsetting measure, this would mean an increase in the effective tax on new housing under the GST relative to the existing tax system.

Sections 254 to 256 provide for a rebate of GST paid by an individual on acquiring a newly-constructed home, a share in a housing co-operative, or on a self-built home. The rebate seeks to ensure that the GST does not pose a barrier to affordable housing by effectively lowering the tax rate on most newly-constructed homes to 4 1/2 per cent -- a level roughly equivalent to the existing average rate of tax embodied in new house prices.

Section 254 Rebate for new housing

This section provides for a rebate of GST paid by an individual who purchases a newly-constructed home from a builder.

Subsection 254(1) Definitions

This subsection defines the term "relation" which is used throughout section 254. Reference should also be made to subsection 123(1) which contains the definitions of several other key terms used in this section, the principle ones being, "single unit residential complex", "residential condominium unit," "builder", and "substantial renovation." It should be noted that for purposes of the new housing rebate, the definition of "single unit residential complex" (which includes detached homes, semi-detached homes and row houses) is extended to include duplexes.

Subsection 254(2) Rebate for homes purchased from builder

This subsection sets out the structure of the new housing rebate, along with the rules that determine eligibility for the rebate.

Paragraph 254(a) sets out the type of transaction that is covered by the new housing rebate. It provides that the rebate applies to both single unit residential complexes (which includes detached homes, semi-detached homes, row houses and duplexes) and residential condominium units. The rebate under this section is available in cases where tax is charged on a residential complex purchased from a builder who supplies both the land and building as part of a single transaction (rebates for owner-built homes are provided under section 256). It should be noted that the term "builder" is defined in subsection 123(1) to include a person who buys unoccupied new houses for resale purposes. Hence, individuals purchasing a new home may be able to claim a new housing rebate even if they are purchasing from a person who did not actually construct the building. A builder also includes a person who, in the course of a business, substantially renovates, or converts, existing property into a residential complex. Therefore, the rebate provisions apply to sales by such persons of converted or renovated property in the same manner as sales of newly-constructed buildings.

Paragraph 254(2)(b) states that, at the time or the agreement to buy the residential complex or condominium unit, the purchaser must be acquiring it as a primary place of residence either for the purchaser or for a person who is a relation of the purchaser. This means that neither recreational cottages (which are not used as the individual's primary place of residence) nor investment properties are eligible for the rebate.

Paragraph 254(2)(c) states that the total consideration paid for the complex or unit must be less than $450,000 in order for the purchaser to be eligible for the rebate. The total consideration includes payment for the provision of properties or services that may reasonably be regarded as being incidental to the provision of the residential unit, such as built-in appliances (see section 138). It also includes any payment for the supply of an interest in the unit. This is relevant in a case where, say, a person who originally entered into a purchase and sale agreement to buy a condominium unit reassigns the agreement before occupying the condominium unit. For example, if a builder charges $400,000 for a condominium unit and the eventual purchaser has paid an additional $50,000 for the assignment, then the purchaser would be treated as having paid $450,000 for the unit.

Paragraph 254(2)(d) requires that all tax payable in respect of the residential complex or unit be paid before a rebate is provided.

Paragraphs 254(2)(e) and (f) provide that, in order to qualify for the rebate, the transfer of title generally has to occur after the dwelling is substantially complete and before it is occupied as a place of residence or lodging by any individual. An exception is made where a condominium unit is occupied, prior to the transfer of ownership, by an individual who is the purchaser or by a person who is a relation of the purchaser. This exception reflects the fact that occupation of a condominium unit very often occurs before the transfer of ownership pending registration of the condominium complex.

Paragraph 254(2)(g) provides that, in order to be eligible for the rebate, the first occupant following the substantial completion of the construction or renovation must be the purchaser or a relation of the purchaser. The purchaser may also be eligible for the rebate if he or she makes an exempt sale of the complex to another individual prior to occupying the complex. For example, if a purchaser of a new house has to relocate and sells the house before moving in, he or she is still eligible for the rebate.

Paragraphs 254(2)(h) and (i) set out the formula for determining the amount of the rebate. The rebate is structured to provide the maximum benefit to purchasers of houses priced at or below $350,000. In these cases, the rebate is equal to 2.5 percentage points of tax (or 36 per cent of the total tax paid). The rebate is phased out for homes priced between $350,000 and $450,000 and does not apply to purchasers of homes priced in excess of $450,000.

Subsection 254(3) Application for rebate

This subsection allows an individual up to four years to claim a new housing rebate from the time the individual acquires a residential complex or condominium unit.

Subsections 254(4) and (5) Application to builder

These subsections permit the vendor, at the time of sale, to pay the rebate to the purchaser or credit the amount of the rebate against tax owing by the purchaser. This ensures that purchasers who are entitled to a rebate receive the benefits immediately and with minimal administrative burden.

Under subsection 254(4), if the purchaser was not credited the rebate at the time of purchase, he or she still has up to four years to claim the rebate by filing an application with the vendor. Of course, the purchaser always has the option of applying for the rebate directly to the Minister of National Revenue.

Subsection 254(5) provides that, where an application by an individual for a rebate is submitted to the builder, the builder is to forward the application to the Minister of National Revenue with the return for the reporting period in which the rebate was paid or credited to the individual. In this circumstance, interest does not apply to the amount so paid or credited.

Subsection 254(6) Joint and several liability

Where the builder pays or credits the rebate to the purchaser directly, and the builder knew or should have known either that the individual was not entitled to the rebate or the amount paid or credited exceeded the amount to which the individual was entitled, subsection (6) makes the builder and the individual jointly liable to repay the appropriate amount to the Minister of National Revenue.

Section 255 Rebate for co-operative housing

This section provides a rebate, comparable to that under section 254, where an individual purchases a share in a co-operative housing corporation for the purpose of using a residential unit of the corporation as a primary place of residence of the individual (or a relation of the individual). This section permits an individual to claim a rebate in respect of the share purchase, provided the conditions set out in this section are met.

The individual is eligible for the rebate if the corporation paid GST when it acquired the complex and if the total consideration paid by the individual for the share in the corporation is less than $481,500. The $481,500 limit assumes that the share price reflects the GST paid on the acquisition of the complex and corresponds to the tax-excluded threshold of $450,000 in the case of the rebate on new houses. For this purpose, the total consideration includes payments for the provision of properties or services that may reasonably be regarded as being incidental to the provision of the residential unit (see section 138). It also includes any consideration for a supply to the purchaser of an interest in the unit, complex or corporation. In order to qualify for the rebate, possession of the unit must be given to the purchaser after the unit is substantially complete but before it is occupied as a dwelling by any individual. As well, the first occupant to use the unit as a primary place of residence following the substantial completion of the construction or renovation of the entire complex must be the purchaser or a relation of the purchaser. In certain cases, the purchaser may also be eligible for a rebate if the share is sold to another individual before the purchaser occupies the unit. For example, if the purchaser has to relocate before moving into the unit, the purchaser still qualifies for the rebate as long as the unit is not used as a dwelling by any person before the purchaser resells the share.

Paragraphs 255(2)(g) and (h) set out the formula for determining the rebate. The formula is the same as that for determining the rebate on new houses except that, in this case, all amounts are converted to tax-inclusive amounts since the share price is presumed to include GST paid by the housing corporation on its acquisition of the complex.

The purchaser has up to four years after the day ownership of the share is transferred to claim the rebate directly from the Minister of National Revenue.

Section 256 Rebate for owner-built houses

Under this section, a new housing rebate is provided to an individual who builds or substantially renovates his or her own primary place of residence or engages another person to do so. Consistent with the structure of the rebate in section 254 for new homes purchased from a builder, the value of the rebate for owner-built homes depends on the total value of the property (house and land). In addition, for owner-built homes, the rebate depends on whether GST was paid on the acquisition of the land. Rebates for owner-built homes are available to eligible individuals where the fair market value of the residential complex, at the time the construction or renovation thereof is substantially completed, is less than $450,000.

Where the individual paid GST on the land, the rebate equals approximately 2.5 percentage points of tax; that is, the same as for new homes purchased from a builder under section 254. Where no GST was paid on the land, the rebate amount is appropriately reduced. As under the general rebate, the assistance is phased out between $350,000 and $450,000.

Where the value of the completed dwelling is clearly less than $350,000, the purchaser is not required to obtain a formal appraisal. As a result, no appraisal will be required for the vast majority of owner-built homes; the rebate will be calculated simply as a percentage of tax actually paid. Only where the value of the property is close to or exceeds $350,000 will the purchaser be required to obtain a formal appraisal. For properties appraised at greater than $350,000, the rebate is to be calculated on the basis of this appraisal.

Similar conditions with respect to first occupancy as apply in the case of a new home purchased from a builder also apply to owner-built homes.

In the case of owner-built homes, an individual must claim the rebate from the Minister of National Revenue within two years after the earlier of the day the home is first occupied by the individual (or ownership is transferred to another individual before the home is occupied) and the day construction or substantial renovation of the home is substantially completed.

Section 257 Non-registrant sale of real property

Subsection 257(1) provides a rebate of uncredited tax where a non-registrant makes a taxable supply of real property. For example, assume a medical practitioner purchases a new commercial building for use in supplying exempt medical services. GST would be payable on the acquisition of the building, but no input tax credit could be claimed at that time because the building was not acquired for use in a commercial activity. On the resale, however, the owner would be required to charge GST. If the owner is a non-registrant, no input tax credit could be claimed at the time of sale under section 193. To prevent double taxation in this circumstance, section 257 permits the non-registrant to claim, at the time of sale, a rebate equal to the lesser of:

> (i) the total tax payable on the acquisition of the property and on improvements thereto, and
>
> (ii) tax on the consideration received for the sale.

This rebate is reduced to the extent that the non-registrant had claimed or was entitled to claim a rebate under any other section in respect of the property.

Subsection 257(2) provides that the application for a rebate under this section is to be made within four years after the day consideration for the sale was paid or became due to the non-registrant.

Section 258 Legal aid

Under Part V of Schedule V to the Act, legal services billed by the administrator of a provincial legal aid plan to legal aid recipients are exempt from GST.

Section 258 provides that the administrator of a provincial legal aid plan who purchases legal services from private lawyers is entitled to a rebate of the tax paid on those services.

Section 259 Rebates for charities, non-profit organizations and selected public service bodies.

Under this section, registered charities, as well as non-profit organizations that are substantially funded by governments, are eligible for a rebate of 50 per cent of any non-input-tax-creditable GST paid on their purchases relating to their charitable or publicly supported non-profit activities. In addition, municipalities, public and private non-profit elementary and secondary schools, universities, publicly funded colleges and public hospitals are entitled to partial rebates of GST. The rebate rates are to be prescribed by regulation.

Section 259(1) Definitions

This subsection defines key terms used throughout the section.

It should be noted that for purposes of the rebate provisions, "charity" is defined to include a non-profit nursing home, whether or not registered as a charity under the Income Tax Act. Therefore, all non-profit nursing homes qualify for the 50 per cent rebate for charities.

"Claim period" refers to the period for which an application for a rebate under this section may be made. Subsections 259(6), (15) and (16) provide that only one application may be filed per period by an organization or by a branch or division of the organization if the organization has elected for divisional filing. Where the applicant is registered for GST purposes, the claim period is the same as the registrant's reporting period. Therefore, a registrant will file its rebate claim with its regular GST return -- annually, quarterly or monthly, as the case may be. Applicants not registered to collect GST may file one rebate application for every fiscal quarter of the applicant. Of course, any applicant may, if it so chooses, file one application per year, covering all claim periods in the year.

"Municipality" is defined to include organizations designated by the Minister of National Revenue to be municipalities, but only in respect of their supplies of municipal services. As a result, a municipal transit authority, for example, that is legally distinct from the municipality, may be designated for this purpose so as to enable the authority to claim the same rebate in respect of its purchases for use in supplying exempt municipal transit services as the municipality would be able to claim if it provided the services directly.

The expression "percentage of government funding" is relevant in determining whether a non-profit organization is a "qualifying" organization and therefore eligible for a rebate under this section. Subsection 259(3) provides that the percentage of government funding must be at least 40 per cent to qualify for a rebate. The precise calculation of an organization's degree of government funding for this purpose is to be set out in the regulations. The sources of government funding will be limited to direct financial assistance from all three levels of government. Assistance in the form of low-interest loans and loan guarantees will not be considered to be government funding for these purposes.

Subsection 259(2) Meaning of "tax payable"

Subsection (2) ensures that, where an applicant is required to remit certain amounts of GST otherwise than as a result of making a purchase (for example, where there effectively is a recapture of its input tax credit as a result of a change of use of property), the amount is rebatable under this section. The subsection also provides that the percentage rebate applies to the amount of GST paid net of any input tax credits to which the applicant is entitled. In other words, if a charity pays $100 of GST and claims $60 as an input tax credit, its entitlement to a rebate under this section is limited to 50 per cent of the remaining $40 of GST.

Subsection 259(3) Qualifying non-profit organizations

This subsection provides that non-profit organizations are eligible for a rebate in respect of tax payable in a year if their percentage of government funding for that year, as determined by the rules set out in regulations, is at least 40 per cent. For this purpose, direct financial assistance from all three levels of government will be taken into account.

Subsection 259(4) Rebate

This subsection provides authority for the Minister of National Revenue to pay rebates to qualifying selected public services bodies. It should be noted that an organization that is in the business of supplying financial services (e.g., a non-profit health insurance company) does not qualify for a rebate under this section. As well, the tax on certain prescribed purchases are not eligible for the rebate (the principal exclusions are to be new goods acquired solely for resale in the course of a business and alcohol and tobacco acquired for resale).

Subsection 259(5) and (6) Application for rebate

These subsections set out the rebate application requirements. It should be noted that an organization can file an application as soon as it can demonstrate that it satisfies the eligibility criteria. In practice, this means that a non-profit organization is able to apply for a rebate at the end of the first claim period in a year in which it can demonstrate that it meets the government funding test for that year, rather than waiting until the end of the year to apply. It should also be noted that any tax payable by an organization before it becomes eligible to apply for a rebate (e.g., before a charity is registered under the Income Tax Act or before a non-profit organization can show it is substantially government funded) is still rebatable as long as the organization meets the eligibility criteria by the end of the year in which the tax became payable. Where an organization has not claimed a rebate for tax that became payable in a particular claim period on an application filed for that period, it has up to four years to claim the amount in another application. Subsection (6) provides that only one application can be filed for each claim period. Where an organization has elected for divisional filing, subsections (15) and (16) provide that only one application per division may be filed for each claim period.

Subsections 259(7), (8), (9) and (10) Election for simplified computation

Subsection (7) provides that charities and non-profit organizations that are registered for GST purposes may elect to determine the amount of the rebate under this section to which they are entitled using a simplified method. Under this method to be set out in the regulations, the charity or non-profit organization will claim input tax credits in the normal manner for inventories and for purchases of capital goods and real property over $10,000. However, in lieu of determining the actual input tax credits allowable on its remaining eligible purchases (paragraph (8)(a) denies the usual credit for these purchases), it will be able to claim a rebate equal to a prescribed percentage of its taxable sales - a proxy for the portion of its purchases relating to taxable activities. The charity or non-profit organization will then claim a rebate of 50 per cent of the remainder of the actual tax paid on its eligible purchases. In this way, the organization is able to avoid the need for pro-rating to determine what portion of an expense, such as commercial rent on a building used for both taxable and exempt activities, is eligible for an input tax credit and what portion is eligible for a 50 per cent rebate. Note also that paragraph (8)(b) provides that where, under the simplified method, a rebate is claimed in lieu of the usual input tax credits for capital property under $10,000, the change-of-use rules do not apply to that property.

Subsection 259(11) Deemed revocation of election

The election to use a simplified rebate calculation under subsection 259(7) is applicable only to charities and non-profit organizations that are GST registrants since only registrants would be faced with the potential difficulty of calculating both input tax credits and rebates. Since non-registrants are not eligible to claim input tax credits, their rebate is determined simply as the applicable prescribed percentage times the tax payable on all eligible purchases. Therefore, where an organization that had made an election under subsection (7) ceases to be a registrant (which might happen, for example, if it became eligible for "small supplier" status), the election is considered to have been revoked immediately before the organization's GST registration is cancelled. It should be noted that 50 per cent of any tax remittable by the organization under subsection 171(3) or (4) as a result of it ceasing to be a registrant would qualify for a rebate as long as the tax was in respect of eligible property or services (see subsection 259(4)).

Subsections 259(12) and (13) Selected public service bodies

These subsections provide that, where one selected public service body purchases property or a service that is primarily for use by another public service body, the rebate of tax in respect of that purchase is based on the prescribed rate for the category of public service bodies in which the user falls. For example, if a university purchased a computer primarily for use by an affiliated public hospital, the university would qualify for a partial rebate of the GST paid on the computer based on the prescribed rebate rate for hospitals. Similarly, where a single organization falls into more than one category of public service bodies, the rebate to which the organization is entitled in respect of particular property or services is based on the primary use of those items. For example, if a charity operates a hospital and a nursing home, any purchases that are primarily for use in the nursing home would qualify for the 50 per cent rebate, while purchases primarily for use in the hospital would qualify for the rebate based on the applicable rebate rate for hospitals.

Subsection 259(14) No change in prescribed percentage

Pursuant to this subsection, the rebate rates prescribed by regulation for the purposes of this section cannot be changed by an amendment to the regulations. Therefore, an Act of Parliament would be required to amend the rates.

Subsection 259(15) Application by branches and divisions

This subsection provides that where on organization's branches or divisions are filing separate GST returns (in accordance with subsection 239(2)), those branches or divisions are also to file separate claims for any rebates to which the organization is entitled under this section. The reporting period and the rebate claim period are the same for registrants. Therefore, the GST return and the rebate claim may be submitted together. It should be noted that under subsection 228(6) if the rebate application and the GST return are filed together, the amount of the rebate may be deducted from any GST remittable so that only the net amount need be remitted.

Subsection 259(16) Application of section 239

This subsection allows an organization entitled to rebates under this section to apply to have its branches or divisions file separately for the rebates. As noted above, if those branches or divisions are already filing separate GST returns, they will automatically file separate rebate claims. This subsection permits a division that is not filing GST returns (e.g., where it has no commercial activities or is a "small supplier") to file separate rebate claims, provided that the conditions set out in subsection 239(2) applicable to divisional GST reporting are satisfied, namely that the division must be separately identifiable by its location or the nature of its activities and it must maintain a separate system of accounts. If a division that is filing separate rebate claims begins to make taxable supplies in excess of the small supplier therehold, it will be required to file separate GST returns in relation to those supplies as well. The rebate application and the GST return will be filed together and, as noted under subsection 259(15), the amount of the rebate may be set-off against any GST collectible so that only the net amount will be remitted.

Section 260 Charity exports

This section provides a rebate to a charity for GST paid by it on a property or service that it exports for charitable purposes outside Canada in those circumstances where the charity was not entitled to claim an input tax credit for that tax. This rebate is provided to ensure that exports of this kind are fully relieved of GST (the rebate under section 259 would refund only half of the tax). The rebate under this section is claimed by the charity by filing a prescribed form within four years from the end of the charity's fiscal year to which the claim relates.

Section 261 Rebate of payment made in error

Under this section, where a person pays or remits an amount of tax, net tax, penalty or interest that is later found not to be payable or remittable, the person may claim a rebate of that amount within four years from the day the amount was paid or remitted. However, where the amount has been included in an assessment under section 296, or relates to a determination of value under the Customs Act, the person must follow the applicable assessment and appeal procedures to recover the amount. A person may not make more than one application per month under this section.

Section 262 Application for rebate

This section sets out the application requirements in respect of rebates under Division VI. The contents of and manner of filing applications is to be prescribed by regulation. Subsection (2) provides that only one rebate under this Division may be made with respect to any given matter. This is to prevent potential doubling-up of rebate claims. For example, it would preclude a husband and wife from filing separate claims for a new housing rebate in respect of the same residence.

Subsection (3) specifically applies to the new housing rebates provided under sections 254 to 256. It addresses the situation where more than one individual pays consideration or tax in respect of property to which a rebate claim relates. In that circumstance, the total tax or consideration relevant in determining the value of the rebate is the aggregate of the amounts paid by each of the individuals.

Section 263 Restriction on rebate

This section provides that a person is not entitled to a rebate of an amount of tax to the extent that the amount has otherwise been refunded, remitted or credited to the person or to the extent that the person was otherwise entitled to an input tax credit in respect of the tax.

Section 264 Overpayment of rebate

This section provides that, where there has been an overpayment of a rebate under Division VI, the recipient shall repay the excess amount. However, under subsection (2), to the extent that the effect of the overpayment is to increase any other rebate to which the person is entitled, the recipient is treated as having repaid the excess. As a result interest will be charged only on any balance owing.

Division VII

Miscellaneous

Subdivision a

Trustees, Receivers and Personal Representatives

Sections 265 to 269   Trustees, receivers and personal representatives

These sections set out rules that apply where a trustee in bankruptcy or receiver is appointed, or where a property is settled on or distributed by a trust or estate.

Section 265   Bankruptcies

This section sets out the rules that apply where a trustee in bankruptcy assumes the administration of the estate of a bankrupt person. It sets out the obligations and liabilities of the trustee for purposes of the GST, as well as the requirements respecting the determination of tax reporting periods and the filing of GST returns, where applicable. In essence, the trustee in bankruptcy is treated as an agent of the bankrupt rather than as a separate person. As such, there is no supply of property that attracts GST when the property is transferred to or from the bankrupt on the declaration of, or discharge from, bankruptcy.

Section 266   Receivers, etc.

This section sets out the rules that apply where a receiver, receiver-manager, liquidator or committee is appointed to manage, operate or liquidate any business or property, or to manage the affairs, of a person. The rules in these circumstances are similar to those described above relating to trustees in bankruptcy. Thus, the "receiver" (as defined) is treated as being an agent of the person and not a trustee of the estate of the person for GST purposes.

Section 267   Personal representatives

This section sets out the rules that apply where an "executor" (as defined in subsection (2)) becomes responsible for the collection, administration and disposition of the property of a deceased. The rules provide that the property passing, on death, to the executor is to be treated for GST purposes as having been disposed of by the deceased for no consideration. It will then be treated as being used by the executor immediately after its passing for the same purposes as it was used by the deceased before that time. As a result no GST applies on the transfer of property to an individual's estate. In addition, the executor is treated as having paid any tax on the property that was paid by the deceased and as having claimed any input tax credits that were claimed by the deceased. This enables the executor to claim an input tax credit in appropriate circumstances for taxes paid by the deceased when the property is subsequently sold or distributed by the estate.

Section 268   Inter vivos trust

This section provides that, where property is settled by a person on an inter vivos trust, for GST purposes, the transfer is to be treated as a sale of the property by the person to the trust. It also provides that the consideration for the sale is equal to the amount determined for income tax purposes to be the proceeds of disposition of the property. Thus, to the extent that the supply is a taxable supply, the transfer will attract GST equal to 7 per cent of the amount so determined.

Section 269 Distribution by a trust

This section provides that, where a trustee distributes property of the trust to a beneficiary, the trust is treated for GST purposes as having made a supply of the property. The value of the consideration for the supply is the same as the amount determined for income tax purposes to be the proceeds of disposition of the property.

Section 270 Certificate before distribution

This section provides that a representative (i.e., an executor, receiver, assignee or like person) handling the estate or administering or winding up a commercial activity or business of a person is not entitled to distribute any property under the representative's control before obtaining a certificate from the Minister of National Revenue certifying that all amounts that are, or can reasonably be expected to become, payable or remittable under Part IX of the Act by the representative or the person have been paid or security therefor has been accepted by the Minister. Failure to obtain the certificate renders the representative liable for the payment of the tax to the extent of the value of the property distributed.

Subdivision b

Amalgamation and Winding-Up

Section 271 Amalgamation

This section provides the rules that apply on the amalgamation of two or more corporations.

Paragraph 271(a) provides that the new corporation formed on an amalgamation will generally be treated, for GST purposes, as being a person separate from each of the predecessor corporations. However, paragraph (b) provides that the new corporation will be considered to be the same corporation as, and a continuation of, each of the predecessor corporations with respect to the property of those predecessors and for purposes of the provisions relating to bad debts. Thus no supply -- and no GST consequences -- will be triggered in respect of property transferred on the amalgamation. As well, the new corporation will report the appropriate addition or deduction, as the case may be, from its net tax in relation to an amount owed to a predecessor that is written off as a bad debt or recovered after the amalgamation takes place. This paragraph also provides that, for the purposes of the rules in Division V of the Act relating to the reporting periods of the new corporation, its threshold amounts as determined under section 249 will be calculated by reference to supplies made by its predecessor corporations.

Section 272 Winding-up

This section provides special rules that apply where a subsidiary corporation is wound up into another corporation owning at least 90 per cent of the issued shares of each class of the capital stock of the subsidiary. In this case, the transfer of assets to the parent corporation is treated as not being a supply. With respect to such property, the parent corporation is treated as being the same corporation as, and a continuation of, the subsidiary corporation. In addition, taxable supplies made by the subsidiary are treated as having been made by the parent for the purpose of the bad debt provisions and of determining the parent's threshold amount and its entitlement to a quarterly or annual reporting period.

Section 273 Joint venture election

Under the general rules of the GST, each of the participants in a joint venture (that is not a partnership) will account separately for GST paid on their purchases and collectible on any supplies they make directly or through the operator of the joint venture acting as their agent (including deemed supplies to their agent under section 177).

Section 273 provides flexibility in the operation of the GST for joint ventures, particularly where there is a single operator and the remaining participants are not directly involved in the day-to-day operation of the joint venture.

Under this section, joint venture participants and the operator may elect to have the operator be responsible for accounting for the GST on all purchases and sales made by participants through the operator. As a consequence, GST will apply neither to any revenues subsequently distributed to participants by the operator nor to reimbursements by the participants to the operator for expenses incurred on their behalf. Legally, however, the operator and the participants will remain jointly and severally liable for the collection and remittance of GST on those supplies. Participants, of course, will still be permitted to claim input tax credits for tax paid on joint venture-related expenses incurred by them directly (and not through the operator) to the extent that they would be entitled to claim input tax credits if the election had not been made.

An election between an operator and another participant in a joint venture is to be filed with the first return of the operator that either accounts for tax on supplies made by the operator in the course of the joint venture activities since the participant joined the venture or that covers a period in which the operator first receives reimbursement from the participant for expenses. However, in the case of existing joint ventures at the start-up of the GST, an election between the operator and a person who is a participant at that time need not actually be filed. Pursuant to subsections 273(3) and (4) the operator may simply proceed to account for the joint venture operations as though the election had been made provided that the operator notifies the participant of this intention before 1991 and the participant does not advise the operator in writing within 30 days of receiving the notice that the participant does not want to adopt this special method of reporting.

The election is available to joint ventures involving the exploration and development of mineral, petroleum and gas deposits. Provision is also made for this election to be available to joint ventures in other prescribed cases.

Subdivision c

Anti-Avoidance

Section 274 Anti-avoidance

This section introduces a general anti-avoidance rule which, like its counterpart in section 245 of the Income Tax Act, is intended to prevent abusive tax avoidance transactions or arrangements without interfering with legitimate commercial transactions. The comments on the income tax provisions, which are found in the explanatory notes to Bill C-139 (1988, C.55) published in June 1988, are also generally applicable in respect of this section.

Subsection 274(1) Definitions

Subsection 274(1) defines certain expressions used in this section.

"Tax benefit" means a reduction, avoidance or deferral of tax or other amount payable by a person under Part IX or an increase in a refund, rebate or other amount payable to a person under Part IX.

"Tax consequences" means an amount payable by, or refundable to, a person under Part IX, or any other amount relevant for the purposes of computing that amount.

"Transaction" includes an arrangement or event.

It should be noted that by virtue of subclause 12(3) of Bill C-62 the provisions of section 274 also apply to the inventory and new housing rebates as provided in sections 120 and 121 of the Excise Tax Act Part VIII.

Section 274(2) General anti-avoidance rule

This provision sets out the general anti-avoidance rule. Where a transaction is an avoidance transaction, the tax consequences are to be determined as is reasonable in the circumstances in order to deny the tax benefit resulting from the transaction or the series of transactions that includes that transaction.

Subsection 274(3) Avoidance transaction

This provision defines the expression "avoidance transaction" for the purposes of the general rule in subsection (2). An avoidance transaction is a transaction that alone, or as part of a series of transactions, cannot reasonably be considered as having been undertaken or arranged primarily for bona fide purposes other than to obtain a tax benefit and that would, but for section 274, result, directly or indirectly, in a tax benefit. Thus, an avoidance transaction is determined according to a non-tax purpose test.

Subsection 274(4) Limitation

This subsection is a limitation to the general rule in subsection (2). Even where a transaction results, directly or indirectly, in a tax benefit and has been carried out primarily for tax purposes, subsection (2) does not apply if it may reasonably be considered that the transaction would not result directly or indirectly in a misuse of the provisions of Part IX or an abuse having regard to the provisions of Part IX read as a whole. This measure is intended to apply where a taxpayer establishes that a transaction carried out primarily for tax purposes does not, nonetheless, constitute an abuse of Part IX.

Subsection 274(4) recognizes that the provisions of Part IX are intended to apply to transactions with real economic substance, not to transactions intended to exploit, misuse or frustrate those provisions so as to avoid tax. It also recognizes, however, that tax benefits expressly provided for in the legislation should not be neutralized by this section in non-abusive situations.

Subsection 274(5) Determination of tax consequences

Where the general anti-avoidance rule applies, the tax consequences to a person are to be determined so as to deny the tax benefit on a basis that is reasonable in the circumstances. To that end, subsection 274(5) provides the following examples of possible results:

- all or any part of an input tax credit or other deduction in computing tax or net tax payable may be disallowed or allocated to any person;
- a payment or other amount may be recharacterized; and
- the tax effects that would otherwise result from the application of other provisions of Part IX may be ignored.

Subsection 274(6) Request for adjustments

Where the general anti-avoidance rule under subsection (2) applies with respect to a transaction and a person has received a notice of assessment, reassessment or additional assessment, as the case may be, regarding the transaction, any other person is entitled to request an assessment, reassessment or additional assessment under subsection (2), in respect of the same transaction. The request under this subsection must be made within 180 days of the date of mailing of the first notice of assessment, reassessment or additional assessment. The purpose of this provision is to enable adjustments of a relieving nature to persons other than the person originally assessed in respect of the same transaction.

Subsection 274(7) Exception

The tax consequences resulting from the application of this section shall only be determined through a notice of assessment, reassessment or additional assessment. This prevents a person from using the provisions of subsection 274(2) in order to modify the person's tax payable, or any other amount, without requesting the adjustment under the procedure set up in subsection 274(6).

Subsection 274(8) Duties of Minister

Any request under subsection (6) by a person for an assessment, reassessment or additional assessment shall be considered by the Minister with all due dispatch. The assessment, reassessment or additional assessment so made may not extend beyond that which may reasonably be regarded as relevant to the particular transaction. The

Minister, in considering a request under subsection (6), is not restricted by the four - year limitation periods in subsections 298(1) and (2).

Division VIII

Administration and Enforcement

Division VIII of Part IX of the Act provides the authority for the administration and enforcement of the GST. The provisions of this Division parallel the provisions of the Income Tax Act with respect to the administration and enforcement of that tax. Where appropriate the counterpart provision under the Income Tax Act is shown in parentheses.

Subdivision a

Administration

Section 275 Minister's duty, delegation, etc.

The Minister of National Revenue is responsible for the administration and enforcement of the goods and services tax and the control and supervision of all persons employed or engaged for that purpose. The Deputy Minister of National Revenue - Customs and Excise is delegated the authority to exercise all the power and perform all the duties of the Minister under Part IX.

Subsection 275(2) authorizes the appointment or employment of persons necessary to administer and enforce the tax. Under subsection (3) the Minister may authorize a designated officer or agent or a class of officers or agents to exercise powers or perform duties of the Minister under Part IX. Any person employed in connection with the administration or enforcement of the tax may be designated, by the Minister, to administer oaths and take and receive affidavits, declarations and affirmations as may be necessary to the administration and enforcement of the tax under Part IX of the Act. (ITA s.220)

Section 276 Inquiry

The Minister may authorize any person to make such inquiry as may be necessary related to the administration and enforcement of the tax. Where a person is so authorized the Minister shall seek, by application to the Tax Court, the appointment of a hearing officer who shall have the powers conferred on a commissioner under sections 4, 5 and 11 of the Inquiries Act. A hearing officer may not exercise the power to punish any person without the certification of a judge of superior or county court in the matter, and unless notice has been given to such person that the power is to be so exercised.

All persons giving evidence in an inquiry are entitled to be represented by counsel and to receive a transcript of that evidence. Persons being investigated are entitled to be represented by counsel and, unless it is determined to be prejudicial to the effective conduct of the inquiry, to be present throughout the inquiry (subsections (5) and (6)). (ITA s.231.4)

Section 277 Regulations

Under subsection (1) the Governor in Council is authorized to make regulations to carry out the purposes and provisions of the goods and services tax, including regulations:

- requiring any class of persons to make returns respecting any class of information required in connection with the administration of the tax and to provide a copy of such return or part thereof to any other person to whom the return relates;
- requiring persons to provide information as to their name, address and registration number to any class of persons required to include such information in a return;
- requiring persons to provide the Minister with their Social Insurance Number; and
- to provide for a deduction or set-off in favour of the Crown against any person regarding monies owed.

Regulations made under Part IX have effect from the date of publication in the Canada Gazette or at such time thereafter as may be specified in the regulation. In certain cases, where the regulation so provides, it may have effect from an earlier date, if the regulation:

- has a relieving effect only;
- corrects an ambiguity or deficiency inconsistent with the objects of Part IX or a regulation thereunder;
- is consequential to an amendment to Part IX applicable to a time prior to publication; or
- gives effect to a budgetary or other public announcement.

(ITA s.221)

Subdivision b

Returns, Penalties and Interest

Section 278 Place of filing and payment

All returns shall be filed with the Minister in the prescribed manner and all amounts payable to the Crown under Part IX shall be remitted to the Receiver General. (ITA s.150)

Section 279 Execution of documents

Any return, certificate or other document required to be provided under Part IX by a person, other than an individual, shall be signed by an individual duly authorized for the purpose. In the case of a person that is a corporation, association or organization, certain senior officers are deemed to be so authorized. (ITA s.236)

Section 280 Penalty and interest

Section 280 imposes penalty and interest charges where a person has failed to pay or remit tax or instalments on account of tax. The rate of interest charged on late or deficient payments will be as prescribed. Pursuant to section 124, both the penalty and the interest will be compounded on a daily basis. (ITA s.161)

Under subsection 280(1), where a person has failed to remit an amount as required under Part IX, both a penalty of 6 per cent per year and interest at the prescribed rate will be imposed on the amount not remitted. The penalty and interest will be calculated from the time the tax was required to be remitted until the day on which the tax is remitted.

Similarly, where a person has failed to pay all or part of an instalment of tax required to be paid under section 237, subsection 280(2) will impose both a penalty of 6 per cent per year and interest at the prescribed rate on the late or deficient instalment. The penalty and interest will be calculated from the time the instalment was required to be paid until the earlier of the day on which the instalment, penalty and interest is paid and the day on or before which the tax on account of which the instalment was payable is required to be remitted. Subsection 280(3) provides an offset mechanism that limits the total interest and penalties payable in respect of instalments. Interest and penalties under subsection 280(2) are only payable to the extent that they exceed interest plus 6% calculated by reference to overpaid or early instalments. This is similar to the offset mechanism provided with respect to instalments required under the Income Tax Act.

Subsection 280(4) provides that penalty and interest on overdue or insufficient instalments not paid as of the day determined under paragraph 280(2)(d) will be treated, for the purposes of calculating interest under subsection 280(1), as an amount of net tax not remitted on or before that day and will therefore continue to be subject to penalty and interest until paid.

It should be noted that the 6% penalty imposed on late or deficit instalment payments under subsection 280(2) may be offset where the Minister holds security under section 314 for the payment or remittance of tax or any other amount under Part IX. Subsection 280(5) provides that on any particular day, where security is held by the Minister, the penalty will be applicable only to the extent that the total tax, net tax, instalments, penalty and interest not remitted or paid on or before the particular day exceeds the value of the security.

Subsection 280(6) is a de minimis rule. It provides that where a person remits or pays all amounts payable under Part IX, and the total of all penalties and interest payable immediately before the time of such payment or remittance is less than $25, the penalties and interest may be written off and cancelled by the Minister.

Where the Minister has served on a person a demand for payment or remittance in respect of an amount payable under Part IX and, the person complies on or before the date specified in the demand for payment or remittance, the Minister may waive any penalty and interest which accrues during the period commencing with the date of the demand and ending with the date of payment.

Section 281 Extensions for returns

This action provides that the Minister may extend the time for the filing of a return or the providing of any information. This also extends the time on or before which any tax or net tax is payable or remittable and suspends the accrual of the 6% penalty provided under section 280 during the extension period. Interest on any amount payable, however, will continue to accrue throughout any period of extension. (ITA ss. 220(3))

Sections 282 and 283 Demand for return

The Minister may demand that any person file a return with respect to any period or transaction. A failure to comply with the demand will result in a penalty equal to the greater of $250 and 5% of the tax amount outstanding with respect to the period or transaction. (ITA ss. 150(2) and 162)

Section 284 Failure to provide information

Failure to provide any information or document as required under Part IX may result in a penalty of $100 for each default unless the Minister waives the penalty, or, in the case of a failure to provide information, a reasonable effort was made by the person to comply. (ITA ss. 162(5))

Section 285 False statements or omissions

Every person who knowingly or under circumstances amounting to gross negligence is a party to the making of a false statement or omission in a return or other document made with respect to a reporting period or transaction is liable to a penalty equal to the greater of $250 and 25% of the amount by which any tax amount owing is reduced or tax refund or rebate is increased as a result of the false statement or omission. (ITA ss.163(2))

Subdivision c

General

Section 286 Keeping books and records

Every person who carries on a business or is engaged in a commercial activity in Canada or who is required to file a return or who may claim a refund or rebate in respect of tax under Part IX shall keep records sufficient to enable the determination of the person's liabilities, obligations or entitlements under Part IX. Such records shall be kept in Canada unless otherwise permitted by the Minister. Records shall be retained for 6 years or such other period as may be prescribed by the Minister or, in certain circumstances, as the Minister may require or permit. Records relevant to any proceeding initiated under Part IX shall be retained pending the determination of such proceeding. (ITA s. 230).

Sections 287, 288 Inspections

A person authorized by the Minister may, for purposes related to the administration or enforcement of Part IX, inspect, audit or examine documents, property or processes of any person and, to this end, at reasonable times, enter any premises or place of business and require persons therein to provide reasonable assistance and answer all proper questions. Where the premises is a dwelling-house, entry may be made only upon the consent of the occupant or under the authority of a warrant. A warrant may be issued where consent is refused and a judge is satisfied that entry should be authorized to the particular premises for purposes relating to the administration and enforcement of Part IX. Alternatively, a judge may order, inter alia, the occupant to provide reasonable access to the authorized person to any document or property that is or should be kept in the said dwelling house. (ITA s. 231.1)

Section 289 Requirement to provide documents or information

The Minister may require any person to provide any information or document for any purpose relating to the administration or enforcement of the Act. However, the Minister may not require a person to provide information in respect of unnamed persons without the authorization of a judge. An application to a judge for such authorization may be made ex parte and may be granted where the judge is satisfied that:

(1) the person or group to whom the requirement relates is ascertainable; and

(2) the requirement is made to verify compliance by the person or persons in the group with their obligations under the GST.

In granting the authorization the judge may impose such conditions as are appropriate.

The power to impose requirements in respect of unnamed persons may be used in the course of civil compliance programs. For example, in the GST it is very important to be able to trace the flow of input tax (the tax paid by a person) and output tax (the tax collected by a person) back through the production and distribution chain. Because a trader usually gets a full credit for all input tax paid it is important to ensure that another trader has collected and remitted the same amount of output tax. Thus, as part of a civil compliance program, the Minister could issue a requirement to a trader for the names of persons to whom the trader paid GST and the amounts thereof; the Minister might then use the information to verify if the suppliers were reporting the same amount as output tax.

The power of the judge to impose conditions allows the court the flexibility to take account of particular circumstances. For example, if the clerical work involved in extracting the information from the person's records were onerous, the court could order that the persons provide access to the records together with sufficient explanations of how the data are stored and that the Minister provide staff at government expense to do the actual clerical work. Alternatively, the court could order that the Minister pay part or all of the cost of extracting the information. The judge could also impose, in appropriate circumstances, conditions as to the manner in which information is to be provided.

The person upon whom the requirement in respect of unnamed persons is served may seek to have the authorization reviewed; if the person wishes a review, the review must be applied for within 15 days of the day upon which notice of the requirement is served upon the person. On review, a judge may cancel, confirm or vary the authorization. (ITA s.231.2)

Section 290 Search warrant

On the ex parte application of the Minister, a judge may issue a warrant authorizing any person to enter and search any building, receptacle or place and seize any document or thing that may be evidence of an offence under Part IX. A warrant shall be issued when a judge is satisfied that there are reasonable grounds to believe that an offence has been committed and that evidence thereof is likely to be found in the specified building, receptacle or place. The warrant shall refer to the alleged offence, identify the accused and the premises and be reasonably specific as to the evidence sought. However, upon execution of the warrant issued under this section, seizure is not limited to the document or thing specified in the warrant; seizure may extend to such other documents or things as may reasonably afford evidence of the offence under Part IX. Any document or thing seized shall be brought before or reported to a judge who shall order it to be retained or, on motion or application, order it returned. The person from whom a document or thing is seized is entitled to inspect it, and, where it is a document, to obtain a copy thereof. (ITA s.231.3)

Subsection 291(1) Copies

Where any document is seized, inspected, examined or provided under section 276 and sections 288 to 290, the person who seizes, inspects or examines it or another officer of the Departments is entitled to make a copy of the document. A copy of a document, certified as such by the Minister or an authorized person, has the same probative value as the original. (ITA s.231.5(1))

Subsection 291(2) Compliance

A person shall not, hinder, molest or interfere with a person authorized under Part IX to seize, inspect or examine any document, conduct any inspection, audit or examine any documents, property or process, or enter and inspect or seize any document or thing. (ITA s.231.5(2))

Section 292 Requirement to provide "foreign-based information"

This provision allows the Minister to access records maintained outside Canada regarding operations or activities in Canada which are subject to Part IX. The Minister may, by notice, require any person resident in Canada or a non-resident person who carries on business in Canada to provide any information or document available or located outside Canada relevant to the administration or enforcement of Part IX (subsections (1) and (2)).

Notice of not less than 90 days must be given together with a description of the information sought and the consequences of a failure to comply (subsection (3)). A recipient of a notice to provide foreign-based information may seek judicial review of the request within 90 days of service of the notice (subsection (4)). Upon review a judge may confirm, vary or, if unreasonable, set aside the requirement (subsection (5)). A requirement to provide foreign-based information is not unreasonable if that information is under the control of or available to a person related to the individual on whom the requirement is served (subsection (6)).

Failure to comply prohibits the defaulting party from introducing any foreign-based information covered by that notice as evidence in any civil proceeding under Part IX (subsection (8)).

The time period during which a request for information is under review shall not be counted in the time periods for compliance under this section or within which an assessment may be issued. (subsection (7)). (ITA s.231.6)

Section 293 Solicitor-client privilege

A lawyer may defend against his or her prosecution for failure to comply with a requirement for information or a document under section 289 on the basis that a solicitor-client privilege was on reasonable grounds, believed to exist and was claimed.

Subsection 293(3) provides that when an officer is about to seize a document, pursuant to section 290, in the possession of a lawyer and a solicitor-client privilege is claimed on behalf of a named client, the document and all others in respect of which the privilege is claimed shall be seized and thereafter packaged and sealed, without inspection, and placed in the custody of the sheriff or such other custodian as may be agreed upon. Subsection 293(4) provides a similar provision in the case of a requirement to inspect or examine a document, pursuant to section 288 or 289, in the possession of a lawyer. However, in such cases the documents shall be packaged, sealed and identified, including the initialling or numbering of all pages, and be retained by the lawyer. When a document is held by a custodian under this section the lawyer may make an application under subsection 293(14) for an order ex parte authorizing the lawyer to copy the document.

Pursuant to subsection 293(13) no document in possession of a lawyer may be inspected, examined or seized without providing a reasonable opportunity to the lawyer to make a claim of solicitor-client privilege.

Subsection 293(5) provides a period of 14 days within which the client, or the lawyer on behalf of the client, may apply for an order setting a date on which to determine the issue of privilege regarding the secured documents placed in custody. The order shall specify a date, not more than 21 days from the date of the order, for determination of the question whether the client has a solicitor-client privilege in respect of the document, and shall require production of the documents in question at that time. The order must be served within 6 days on the Deputy Attorney General of Canada and any custodian of the document.

Subsection 293(6) provides that the determination of the issue of privilege in respect of the secured document shall be made in camera with the judge having the right to inspect the documents. The question is to be decided summarily. Where the claim of privilege is upheld, the documents shall be returned to the lawyer. Otherwise, the documents shall be delivered to the relevant Departmental person for inspection in satisfaction of the requirement. Reasons for the decision, which identify the document without divulging any details thereof, shall be given.

Pursuant to subsection 293(7), where a claim of privilege has been made with respect to a document and neither the lawyer nor the client have made application for an order under paragraphs 293(5)(a) or (c), the judge shall order that the document be delivered to or be made available for inspection by the relevant Departmental person.

Subsections 293(8) and (12) provide that the duties of a custodian under this section are to safeguard the document in the custodian's charge and to deliver the same only upon consent or judicial order.

Subsection 293(9) provides that the application under paragraph 293(5)(c) may be continued before a judge other than the judge hearing the application.

Under subsection 293(10), no costs shall be awarded on the disposition of any application hereunder.

Pursuant to subsection 293(11), where any question arises as to the course to be followed pursuant to this section, a judge may give such direction as is, in the opinion of the judge, most likely to carry out the object of this section in allowing the claim of solicitor-client privilege for proper purposes.

Under subsection 293(15), when a claim of privilege has been made, the lawyer shall advise the Minister, or person authorized to act on behalf of the Minister, of the address of the client on whose behalf the claim is made so that the Minister may seek a waiver of the claim for privilege.

Subsection 293(16) prohibits interference with any person in the performance of anything authorized under this section. (ITA s.232)

Section 294 Information respecting non-resident persons

Every corporation that is resident in Canada or that carries on business or a commercial activity in Canada at any time in a taxation year is required to file with the Minister prescribed information regarding transactions with non-resident persons with which the corporation did not deal at arm's length during the taxation year. Such information is to be filed within 6 months after the end of the year. (ITA s.233.1)

Section 295 Communication of information

Subsection 295(2) provides that, except as otherwise authorized under the section, no official or authorized person shall knowingly

- communicate or allow to be communicated to any person
- allow any person access to
- use otherwise than in the course of the administration or enforcement of Part IX

any information obtained by or on behalf of the Minister for the purposes of Part IX.

Subsection 295(3) provides that no official or authorized person shall be required in connection with any legal proceeding to produce or give evidence relating to information obtained by or on behalf of the Minister for the purposes of Part IX.

Where an order or direction is made in the course of legal proceedings requiring the giving of evidence or the production of information contrary to subsection (3), subsection 295(7) provides to the Minister or the person a right of appeal to the court of appeal of a province or the Federal Court of Appeal, as the case may be, according to the origin of the order or direction. Under Subsection 295(9) an appeal stays the operation of any such direction or order until judgement on the issue is given.

Under subsection 295(8) the court hearing an appeal may dismiss or allow the appeal.

The exceptions to the general rule of confidentiality are found in subsections 295(4) to (6):

(a) in respect of criminal proceedings under an Act of Parliament or in respect of proceedings relating to the administration or enforcement of the Excise Tax Act, the Income Tax Act, the Customs Act, the Customs Tariff, the Excise Act, the Softwood Lumber Products Export Charge Act or the Special Import Measures Act.

(b) communication of or access to information by an official or authorized person

- in the course of performing duties in connection with the administration or enforcement of Part IX, to another official or authorized person;

- under prescribed conditions, on a reciprocal basis, to the government of a province or any foreign state (or subdivision thereof) for the purposes of administering a sales tax or tax similar to the tax under Part IX imposed by the province or foreign state (or subdivision thereof);

- to any person within a prescribed class of persons (subject to such conditions as the Minister of National Revenue may specify) or to any person otherwise legally entitled thereto. (for instance, this would permit customs officials to provide to officials of Agriculture Canada or Health and Welfare Canada information relating to the importation of restricted or prohibited goods);

- as necessary, to a person to determine any liability, obligation or entitlement to a refund, rebate or input tax credit of the person under Part IX;

- to an official of the Department of Finance for the purposes of evaluating and formulating tax policy;

- to an official of the Department of National Revenue for the purposes of administering or enforcing the Excise Tax Act, the Income Tax Act, the Customs Act, the Customs Tariff, the Excise Act, the Softwood Lumber Products Export Charge Act or the Special Import Measures Act;

- to a department or agency of the government of Canada or a province regarding name, address, occupation or type of business of a person for statistical analysis; and
- regarding a person, with the permission of the Minister, to the legal representative or agent of the person, authorized in writing in that behalf.

Subdivision d

Assessments, Objections and Appeals

Assessments

Section 296 Assessments

Subsection 296(1) provides the Minister with the general authority to assess the net tax of a person (or the person's representative as defined under section 270) or tax, penalty or interest payable by a person. The limitation periods for assessments are provided in section 298.

Subsections 296(2) to (6) provide that in assessing the tax payable or net tax remittable, as the case may be, by a person, the Minister may take into account any amount unclaimed as an input tax credit, deduction or refund and any overpayment of tax with respect to the reporting period being assessed. Such amounts may be applied against any outstanding tax liability under Part IX for the reporting period under assessment or any other reporting period for which a return has been filed before receipt of the notice of assessment. In such cases the person shall be deemed to have properly claimed, deducted or made application for the amount.

Under subsection 296(6) any balance owing is to be refunded. Interest at the prescribed rate will accrue in respect of amounts paid in excess of amounts payable or remittable. Interest of less than one dollar will not be paid or applied under this section. (ITA s.152)

Section 297 Assessment of rebate

This section provides that each application for a rebate under Division VI shall be assessed and, where an amount is determined to be payable, the Minister shall pay the rebate. The Minister may reassess or make additional assessments. Interest shall be paid at the prescribed rate in respect of rebate amounts owing.

Section 298 Period for assessment

Subsection 298(1) establishes limitation periods on the Minister's right to assess a person under section 296. Generally, an assessment of a person shall not be made more than four years after;

(a) in the case of an assessment of net tax, the later of the day on which the return was required to be filed under section 238 and the day the return was filed,

(b) in the case of an assessment of tax payable under Division II in respect of a supply by way of a sale of real property and, by virtue of subsection 221(2), the supplier was not required to collect and remit tax, the later of the day on which the return was required to be filed under section 228 and the day the return was filed,

(c) in the case of an assessment of tax payable under Division II, other than tax in respect of real property payable and remittable by the recipient, the tax became payable,

(d) in the case of an assessment of tax payable under Division IV, the later of the day on which the return was required to be filed under section 219 and the day the return was filed,

(e) in the case of a penalty other than a penalty under section 280 or 285, the person became liable to the penalty,

(f) in the case of an assessment of a representative under subsection 270(2), the person became liable.

Subsection 298(2) provides that a reassessment or additional assessment of a rebate claim shall not be made more than four years after the day on which the application for rebate was filed.

Pursuant to subsection 298(7), a person may, during the course of the four year periods described above waive the application of the limitation. This waiver may be revoked on six months notice to the Minister.

Subsections 298(3) to (6) establish exceptions to the limitations on assessment periods described above. Under subsection 298(3), the periods do not run with respect to a reassessment made to give effect to a decision on an objection or appeal. Subsection 298(4) provides that an assessment may be made at any time where, in respect of the particular matter, the person has

(a) made a misrepresentation attributable to the person's neglect, carelessness or wilful default,

(b) committed fraud in the making or filing of a return or application for a rebate or in the provision of information under this Part, or

(c) filed a waiver in effect at that time.

Where it is determined by an assessment that an amount has been taken into account in respect of a particular reporting period which, in fact, relates to another reporting period, subsection 298(5) enables the Minister to assess the other reporting period. Reference should be made also to subsection 296(3).

Subsection 298(6) provides that where a reassessment results in a reduction of the tax payable by a person and, by reason of such reduction, an input tax credit or rebate claimed by the person should be reduced, the Minister may assess or reassess solely for the purpose of accounting for the reduced credit or rebate. (ITA s.152)

Section 299 Minister not bound

Subsection 299(1) provides that the Minister is not bound by any return, application or information provided by or on behalf of any person. In addition, the Minister may make an assessment notwithstanding, or in the absence of, any return, application or information.

Subsection 299(2) provides that any liability under Part IX to pay or remit tax, penalty, interest or other amount is not affected by an incorrect or incomplete assessment or by the absence of an assessment.

Subsections 299(3) and (4) provide that an assessment is valid and binding, subject to objection or appeal, notwithstanding error, defect or omission.

Subsection 299(5) prohibits an appeal from an assessment on the grounds of an irregularity, informality, omission or error in the observance of any directory provision of Part IX. (ITA ss.152(8))

Section 300 Notice of assessment

Any person assessed shall be given notice thereof. The notice may include assessments of more than one reporting period or transaction. (ITA ss.152(2))

Objections and Appeals

Section 301 Objection to assessment

Section 301 gives a person who is dissatisfied with an assessment the right to file a notice of objection with the Minister within 90 days from the day of mailing of the notice of assessment. The Minister is required to reconsider the assessment and either confirm the assessment, make a reassessment or vacate the assessment. However, the Minister may confirm the assessment without reconsideration where a person who wishes to appeal directly to the Tax Court so requests. The Minister must send a notice of the Minister's decision with respect to matters dealt within the objection to the person by registered or certified mail. (ITA s.165)

Section 302 Appeal to Tax Court

Where a person has objected to an assessment and the Minister reassesses or makes an additional assessment in respect of any matter dealt with in the notice of objection the person may appeal that decision to the Tax Court within 90 days after the day the notice of reassessment or additional assessment was sent by the Minister. (ITA s.169)

Sections 303 to 305 Extension of time

Where a person has not filed a notice of objection or instituted an appeal within the time for doing so, the person may apply for an extension of time.

In the case of a notice of objection, the application is made first to the Minister (section 303). If the Minister refuses the application, the person may make a further application to the Tax Court of Canada within 30 days of the day the Minister's decision was mailed to the person (subsection 304(1)).

In the case of a notice of appeal the application is made directly to the Tax Court of Canada (section 305).

No extension of time will be granted unless the following conditions are met:

(1) the application to the Minister in the case of an objection, or the application to the Court, in the case of an appeal, is made within one year after the expiration of the time otherwise limited for objecting or appealing; and

(2) the person demonstrates that

(a) within the time otherwise limited for objecting or appealing either the person was unable to act or give a mandate to act in the person's name or the person had a bona fide intention to object or appeal

(b) given the reasons set out in the application and the circumstances of the case it would be just and equitable to grant the application and

(c) the application was made as soon as circumstances permitted.

In the case of an application to the Court in respect of an appeal, the Court must also be satisfied that there are reasonable grounds for appealing (subparagraph 305(5)(b)(iv)). (ITA s.167)

Section 306 Appeal

Section 306 provides that a person who has objected to an assessment may appeal to the Tax Court of Canada to have the assessment vacated or to have a reassessment made (see also section 309). The appeal is to be instituted within 90 days after the Minister has confirmed the assessment or reassessed or within 180 days have elapsed after service of the notice of objection, and the Minister has not notified the person that the Minister has vacated or confirmed the assessment or has reassessed. (ITA s.169)

Section 307 Institution of appeals

Taxpayers have a choice of the general procedure or the informal procedure of the Tax Court. Section 307 provides that an appeal under the general procedure shall be instituted in the manner set forth in the Tax Court of Canada Act or any rules made thereunder.

Section 308 Notice to Deputy Minister

Section 308 applies to the informal procedure and requires the Court to send a copy of the notice of appeal to the Deputy Minister of National Revenue for Customs and Excise. It also requires the Deputy Minister to forward copies of all returns, applications, notices of assessment, notices of objection and notifications that are relevant to the appeal to the Court and the appellant.

The above mentioned copies, upon being so forwarded, become part of the Court record and are evidence of the existence of the documents and the making of the statements contained therein. This provision will speed hearings in the informal procedure since it will avoid the need to prove the documents forwarded by the Minister. However, if there is a dispute as to the accuracy or completeness of the copies, nothing prevents a party from leading evidence on the matter. Finally, it should be noted that the documents are prima facie proof of the making of the statements contained therein, not of the truth of the facts alleged in the documents. (ITA s.170)

Section 309 Disposition of appeal

This section sets out the powers of the Court on disposition of an appeal. The Court may dismiss the appeal or it may allow the appeal and either cancel the assessment, or refer the assessment back to the Minister for reconsideration and reassessment. A decision under the informal procedure is to be sent by registered mail to the Minister and the appellant. (ITA s.171)

Section 310 References to Tax Court

This section allows the Minister and a person to agree to have any question arising in respect of any assessment or proposed assessment determined by the Tax Court of Canada. Such determinations are made under the general procedure of the Court (see section 62 amending the Tax Court of Canada Act). (ITA 173) Subsection 310(2) excludes the time during which the question is being determined from the limitation periods for issuing assessments and notices of objection and appeal.

Section 311 References of common questions to Tax Court

Section 311 allows the Minister to apply to have a question arising out of transactions common to assessments or proposed assessment of two or more persons determined by the Tax Court of Canada. If the Court grants the application it will then determine the question.

Under subsection 311(4), the determination of the Court is binding upon all the parties named in the order. A determination may be the subject of an appeal or an application for judicial review in the same manner as an ordinary appeal under the general procedure or informal procedure of the Tax Court.

The general procedure will apply to such references unless all parties agree to the informal procedure (see sections 63 and 64 amending the Tax Court of Canada Act).

Under subsection 311(7) the time during which the question is being determined is excluded from the limitation periods for the issuing of assessments and the filing of notices of objection and appeal. (ITA s.174)

Section 312 Statutory recovery rights only

The rights of a person to recover an amount paid as or an account of tax under Part IX are limited to that as provided in Part IX, the Customs Act and the Financial Administration Act.

Subdivision e

Collection

Section 313 Debts to Her Majesty

Subsection 313(1) provides that all amounts payable under Part IX are debts due to Her Majesty in Right of Canada and are recoverable as such in the Federal Court or in any other court of competent jurisdiction. Moreover, pursuant to subsection 313(3), penalty and interest will attach to and be recoverable in like manner as the judgement debt. (ITA s.222)

Under subsection 313(2), a person may not commence a proceeding for the recovery of any amount payable or remittable under Part IX unless the person has been or may be assessed for that amount and the proceeding is commenced not more than 4 years after the person has become liable to pay or remit the amount. (ITA s.248(2))

Section 314 Security

Section 314 authorizes the Minister to accept security for the payment of any amount that is or may become payable or remittable under Part IX. In the case of an objection to or an appeal from an assessment, the Minister is required to accept security for the payment of any amount in dispute. Where security has been furnished in an amount in excess of the amount to be secured, the Minister shall surrender the security to the extent of the excess. (ITA ss.220(4), (4.2))

Section 315 Assessment before collection

The section provides that the Minister may not proceed to collection action under sections 316 to 321 in respect of any amount payable or remittable by a person that may be assessed under Part IX, other than interest or penalty, unless the amount has been assessed. Upon the mailing of the notice of assessment any amount assessed and unpaid is payable immediately to the Receiver General. The Minister may postpone collection action in respect of all or any part of an amount assessed and which is in dispute. (ITA s.158 and 225.1)

Section 316 Certificates

Section 316 provides a summary method by which the Minister may initiate collection proceedings against a person in respect of tax payable or remittable under Part IX.

Upon the registration in the Federal Court of a certificate to the effect that an amount is payable under Part IX by a particular person, proceedings may be taken thereon as if judgement has been obtained in respect of the amount certified, including penalty and interest thereon (subsections 316(1) and (2)). Under subsection 316(3), all reasonable costs and charges incurred or paid in respect of the registration of the certificate or in respect of any proceedings taken to collect the amount certified are recoverable as if they had been included in the amount certified in the certificate when it was registered. In addition, under subsection 316(4), a document called a memorial may be issued by the Federal Court. The memorial may be filed, registered or otherwise recorded as creating a charge or lien against any land in a province, or interest therein, held by the person. The charge or lien created is effective in the same manner and to the same extent as if it were created by a judgement of the superior court of the province. Subsection 316(11) specifies the details to be included in a certificate and a memorial. Any property bound by the registration of a memorial or certificate cannot be sold or otherwise disposed of pursuant to any process issued or charge or lien created in any proceedings without the written consent of the Minister. (ITA s.223)

Section 317 Garnishment

Section 317 authorizes the collection of any amount payable under Part IX by way of garnishment.

In general, garnishment may be used in respect of amounts owing to a person who is liable to pay or remit an amount under Part IX, called a tax debtor, and also in respect of amounts due to be loaned or advanced to or on behalf of the tax debtor. Thus, subject only to the Bankruptcy Act, where the Minister has knowledge or suspects that a particular person is or will become, within 90 days, liable to make a payment to a tax debtor or a secured creditor of the tax debtor, the Minister may require the payment to be made to the Receiver General on account of the liability of the tax debtor under Part IX (subsections 317(1), (2) and (3)). Under subsection 317(6), the notification of the requirement of a person to pay, to the Receiver General, amounts which would otherwise be payable to the tax debtor, is to be by a letter served personally on or by registered or certified mail addressed to that person. Any such notice shall continue in respect of all periodic payments to be made by the person, without renewal, until the liability under Part IX is satisfied. Every person who fails to comply with a garnishment notice is liable to the Crown for the amount not paid over (subsections 317(7) and (8)). Any person receiving a garnishment notice may be assessed within 4 years of service on the person of the letter from the Minister requiring the payment (subsections 317(9) and (10)). Amounts paid in respect of a garnishment notice are deemed to have been paid to or on behalf of the tax debtor (subsection 317(11)). (ITA s.224)

Section 318 Recovery by deduction or set-off

Where a person is indebted to the Crown under Part IX, the Minister may require the retention by way of deduction or set-off out of any amount that may be or become payable to such person by the Crown. (ITA s.224.1)

Section 319 Acquisition of debtor's property

This section provides that the Minister may purchase or otherwise acquire any interest in property owned by a person indebted to the Crown under Part IX pursuant to a right acquired in legal proceedings or under a Court order or where an interest in the properties is offered for sale or redemption. Upon acquisition, the Minister may dispose of any interests so acquired in such manner as the Minister considers reasonable. Accordingly, this section permits the Minister to participate in foreclosure and other similar proceedings for the purpose of the collection of tax, interest or penalty owing under Part IX. (ITA s.224.2)

Section 320 Moneys seized from tax debtor

This section provides that the Minister may require that moneys seized, in the course of administering and enforcing the criminal law of Canada, be paid over to the Receiver General on account of a liability of a tax debtor under Part IX instead of being restored to the tax debtor. (ITA 224.3)

Section 321 Seizure of chattels

Under subsection 321(1), where a person fails to pay an amount as required under Part IX, the Minister may give 30 days notice to such person by registered or certified mail and if the person fails to make the payment within the 30 days, the Minister may issue a certificate of the failure to pay and direct that the persons goods and chattels be seized. Subject to subsection 321(3), property so seized shall be kept for 10 days and, should the default in payment continue, the property seized shall be sold by public auction. Except in the case of perishable goods, reasonable notice of a sale by public auction of the seized property shall be given, including publication at least once in one or more newspapers having general local circulation. Goods and chattels of a person that would be exempt from seizure under a writ of execution under the law of the province are exempt from seizure under this section (subsection 321(5)). Any surplus resulting from a sale, after the deduction of the amount owing and all expenses, is to be paid over to the owner of the property seized and sold (subsection 321(4)). (ITA s.225)

Section 322 Person leaving Canada or defaulting

Where the Minister suspects that a person has left or is about to leave Canada, the Minister may, in advance of the day otherwise fixed for payment, demand payment of all amounts for which the person is liable or will be liable under Part IX. On a failure to pay, the Minister may direct that the goods and chattels of the person be seized and, in accordance with section 321, be sold. (ITA s.226)

Section 323 Liability of directors

The directors of a corporation which is liable to remit an amount of net tax are jointly and severally liable, together with the corporation, to pay the net tax and any interest or penalties relating thereto (subsection (1)). However a director is not liable unless

(a) a certificate for the amount of the liability of the corporation has been registered in the Federal Court under section 316 and execution for that amount has been returned unsatisfied in whole or in part;

(b) the corporation has been or is in the process of being liquidated or dissolved and the amount owing has been proved within six months after the earlier of the date of commencement of the proceedings and the date of dissolution; or

(c) an assignment or receiving order has been made against the corporation under the Bankruptcy Act.

Further, under subsection 323(3), a director of a corporation is not liable where such director exercised a degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

Any director liable under this section may not be assessed more than two years after the person last ceased to be a director of the corporation (subsections 323(4) and (5)).

Where a director pays an amount in respect of a tax liability of a corporation that is proved in liquidation, dissolution or bankruptcy proceedings, that director is entitled to any preference that the Crown would have been entitled to had the amount not been so paid and, further, is entitled to contribution from the other directors liable for the claim (subsections 323(7) and (8)). (ITA s.227.1)

Section 324 Compliance by unincorporated bodies

This section provides that, in the case of unincorporated bodies, the obligations and liabilities under Part IX are the joint and several liability and responsibility of every member of the body holding a senior office or, where no such officer exists, every member of any management committee, and, failing the existence of officers or a management committee of the body, every member. The Minister may assess any person liable under the section in respect of an amount owing under Part IX by the unincorporated body.

An assessment of a person shall not include any amount in respect of a liability which arose before the day when the person became jointly and severally liable and after the day the person ceased to be jointly and severally liable hereunder. In addition, no person may be assessed more than two years after the day the person ceased to be jointly and several liable unless the person was grossly negligent in the carrying out of any duty or obligation imposed on the body under this Part or who participated in a fraud respecting a return or other document made by the body under this Part (subsection 324(3)).

Section 325 Transfer not at arm's length

Subsection 325(1) provides that, in the case of non arm's length transfers of property between certain persons, the transferee and the transferor are jointly and severally liable to pay an amount equal to the lesser of

(a) the amount by which the fair market value of property minus the consideration for the supply exceeds the amount assessed the transferee under subsection 160(2) of the Income Tax Act and

(b) the total of all amounts for which the transferor is liable under Part IX.

While the foregoing serves to restrict the liability which is joint and several as between the transferor and the transferee, there is no limitation on the liability on the transferor.

Under subsection 325(3), payments made by the transferee in respect of the joint and several liability shall be applied to the joint liability. However, payments made by the transferor shall be applied first to the transferor's liability and thereafter to the joint liability.

The foregoing rules do not apply to a transfer of property between a person and a person's spouse pursuant to a decree or judgement of a competent tribunal or pursuant to a written separation agreement where, at the time, the person and the person's spouse were separated and living apart as a result of the breakdown of the marriage (subsection 325 (4)). (ITA s.160)

Subdivision f

Offences

Section 326 Offences

This section provides that every person who fails to file or make a return or comply with a requirement to keep accurate records, provide reasonable access to any document or property, or provide any document or information as required hereunder, is guilty of an offence. Conviction carries a fine of not less than $1,000 and not more than $25,000 and may include imprisonment for a term not exceeding one year.

A person convicted under this section is relieved of any penalty imposed under Section 283 or 284 for failure to file a return or provide any information or document as and when required, unless a notice of assessment for the penalty was issued before the information or complaint giving rise to the conviction was laid or made. (ITA s.238)

Section 327 Offences

This section provides that every person is guilty of an offense if that person has

(a) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return filed or a document required for the purposes of Part IX,

(b) employed any fraudulent or destructive means for the purpose of evading the payment or remittance or any amount or to obtain a rebate to which the person is not entitled under Part IX,

(c) wilfully, in any manner, evaded or attempted to evade compliance with the requirements of Part IX,

(d) wilfully, in any manner, obtained or attempted to obtain a rebate or refund to which the person is not entitled under Part IX, or

(e) conspired with any person to commit any of the foregoing.

In addition to any penalty otherwise provided, conviction carries a fine of not less than 50% and not more 200% of the tax sought to be evaded or the rebate or refund sought to be gained. Where the amount cannot be ascertained, a fine of not less than $1,000 and not more than $25,000 shall be imposed. The fine may be accompanied by imprisonment for term not exceeding two years.

In respect of the foregoing offenses, the Attorney General of Canada may proceed by indictment. The result, on conviction, is a fine of not less than 100% and not more than 200% of the amount of the tax that was sought to be evaded or the amount of the rebate sought to be gained. Where the amount to be evaded or gained cannot be ascertained, a fine of not less than $2,000 and not more than $25,000 shall be imposed. On indictment, the maximum term of imprisonment shall not be more than five years.

A person convicted under this section is relieved of the penalty imposed under Section 284 in respect of the same matter unless a notice of the assessment for that penalty preceded the laying of the information or the making of the complaint giving the rise to the conviction (subsection 327(3)).

The Minister may stay an appeal under Part IX pending the determination of a prosecution under this section where substantially the same facts are an issue in both instances (subsection 327(4)). (ITA s.239)

Section 328 Offence re: confidential information

This section provides that every person who contravenes section 295 regarding the communication of confidential information is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or both. (ITA ss.239(2.2))

Section 329 Failure to pay, collect or remit taxes

Every person who wilfully fails to pay, collect or remit an amount of tax or net tax as when required under Part IX is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding the aggregate of $1,000 and an amount equal to 20% of the amount of tax or net tax that should have been paid, collected or remitted. This fine may be accompanied by imprisonment for a term not exceeding 6 months.

A failure to comply with any provision of Part IX for which no specific penalty is provided is punishable on conviction by a fine not exceeding $1,000.

Section 330 Officers of corporation, etc.

This section provides that where a person, other than an individual, is guilty of an offence under Part IX, every officer, director or agent of that person who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is liable to the punishment provided for the offence upon the conviction, whether or not the person has been prosecuted or convicted. (ITA s.242)

Section 331 Power to decrease punishment

In respect of any prosecution or proceeding under Part IX, the Court has no authority to impose less than the minimum penalty nor the power to suspend sentence. (ITA s.243)

Section 332 Information or complaint

Any information or complaint under Part IX may be laid or made by any officer of the Department, by a member of the Royal Canadian Mounted Police or by any person authorized to do so by the Minister. Where an information or complaint purports to have been duly laid or made it shall be so deemed and shall not be called in question for lack of authority of the informant or complainant, except by the Minister or a person acting for the Minister or for the Crown.

Any information or complaint in respect of an offence under Part IX may relate to two or more offenses (subsection 332(2)).

Any information or complaint under Part IX may be heard, tried or determined by any court where the accused is resident, carrying on a commercial activity, found or apprehended or is in custody (subsection 332(3)).

Any information or complaint relating to the summary conviction under the Criminal Code, in respect of an offence under this Part, may be laid or made within eight years of the day the matter first arose. (ITA s.244)

Subdivision q

Evidence and Procedure

Section 333 Service

This section provides for the manner in which a notice or document may be sent, issued or served to or on a person. In the case of persons other than individuals, the notice or document may be addressed to the person in the name by which it is known -- for example in the name of the partnership, union or association. In general, a notice is validly served on a person if it is left with any adult person employed at the place of business of the person (subsection 333(2)).

Section 334 Sending by mail

This section provides that anything sent by first class mail or its equivalent is deemed to have been received by the person to whom it was sent on the day it was mailed. It provides further that the payment or remittance of any amount under Part IX shall not be considered to have been paid or remitted until it is received by the Receiver General. (ITA s.244)

Section 335 Proof of service

The sworn affidavit of an officer of the Department having knowledge of the facts relating to a particular case is evidence of the following:

- that a request, notice or demand was sent by registered or certified mail on a named day to a particular person, when accompanied by the post office certificate of registration or true copy thereof;
- that a request, notice or demand was served personally on a named day on a particular person;
- that a particular person has failed to file a return, application, statement or other document or that such was filed or made on a particular day and not before;

- that a particular document is a document that it purports to be, or is a true copy thereof;
- that a notice of objection or appeal from an assessment, as the case may be, has not been received within the time allowed therefor.

In the case of affidavit evidence of an officer of the Department, it is not necessary to prove the signature of that person or of the person before the whom affidavit was sworn (subsection 335(7)).

Every document purporting to have been executed under or in the cause of the administration or enforcement of Part IX over the name in writing of the Minister, the Deputy Minister or an officer authorized to exercise the powers or perform the duties of the Minister shall be deemed to be a document duly signed, made and issued unless it has been called in question by the Minister or a person acting for the Minister or for the Crown (subsection 335(8)).

Any reference to "Revenue Canada, Customs and Excise" in any document issued or executed in the course of the administration or enforcement of Part IX shall be deemed to be a reference to the "Department of National Revenue" (subsection 335(9)).

The date of mailing of any notice or demand that the Minister is required or authorized to send or mail to a person shall be deemed to be the date of the notice or demand. This also applies to a notice of assessment (subsections 335(10) and (11)).

Subsection 335(12) provides that in any prosecution for an offence under Part IX, the production of a return, application, or other document purporting to have been filed or delivered by or on behalf of the person charged is evidence that the return, application or other document was filed or delivered by or on behalf of that person.

In any prosecution for an offence under Part IX, the sworn affidavit of an officer of the Department setting out that the officer has charge of the appropriate records and that an examination of the record shows that an amount required to be paid or remitted to the Receiver General under this Part has not been received, is evidence of these statements (subsection 335(14)).

Division IX

Transitional Provisions

Section 168, in conjunction with section 152, sets out the general rules for determining when a liability for GST arises on a supply.

To facilitate the transition to the GST for transactions in progress on January 1, 1991, this division contains a series of special rules to determine the GST status of transactions straddling the start-up of the GST.

Subsection 336(1) Transfer of real property before 1991

Under subsection 168(5), GST on a sale of real property is payable on the day on which possession or ownership of the property transfers to the buyer, whichever is earlier. Subsection 336(1) confirms that no GST is payable in the case of real property sold to a person where ownership or possession of the property is transferred to the person before 1991.

Subsection 336(2) Transfer of single unit residential complex after 1990

As noted under subsection 336(1), GST is normally payable on the purchase of a new home on the earlier of the day ownership or possession is transferred to the buyer. Subsection 336(2) deals with the situation where an individual entered into an agreement to purchase a single unit residential complex (including a detached, semi-detached or row house) on or before release of the draft GST legislation on October 13, 1989 but, due to delays in construction or other factors, the individual does not acquire ownership or possession of the complex until after 1990. Clearly, it would be unfair in these circumstances to allow for the normal GST rules to apply and require payment of tax over and above the already agreed-upon price (part of which reflected anticipated federal sales tax costs to be incurred during construction).

To address this situation, subsection 336(2) provides that no GST is payable by a purchaser of a single unit residential complex under a written agreement entered into before October 14, 1989 if possession and ownership of the complex are not transferred under the agreement until after the GST comes into effect.

The combined effect of paragraphs 336(2)(g) and (h) are to ensure that the effective tax content on grandfathered house sales is approximately the same as it would be if the existing manufacturer's sales tax had continued in place. Paragraph (h) provides that there is no federal sales tax rebate available under section 121 in respect of the grandfathered property. However, the builder is still permitted to recover any GST paid on purchases after 1990 through the input tax credit mechanism. All other things being equal, this would reduce the tax content in a grandfathered complex. Therefore, paragraph (g) provides that when possession or ownership transfers, the builder must remit tax based on the degree of completion of the building as at January 1, 1991. If the complex is only 20 per cent or less completed on January 1, 1991, the builder is required to pay tax equal to 4 per cent of the consideration for the complex. If the building is more than 20 per cent, but less than or equal to 60 per cent, complete the tax is 2.5 per cent of the consideration paid by the purchaser. If the complex is between 60 and 90 per cent complete, the builder is required to remit tax equal to 1 per cent of the consideration. Any grandfathered complex that is more than 90 per cent complete by January 1, 1991 is not subject to the special tax because the manufacturer's sales tax will have been paid on virtually all of the inputs used in the construction of the complex.

Subsection 336(2) also provides that, if the purchaser would be considered to be a "builder" of the complex only by virtue of paragraph (d) in the definition of builder in subsection 123(1) (as, for example, would happen if the purchaser acquires the property in the course of a business for the purpose of resale), that person is considered not to be a builder. This ensures that the purchaser is not inadvertently swept into the self-supply rules in section 191 and required to pay GST on a grandfathered property. For essentially the same reason, paragraph (e) in subsection 336(2) provides that the self-supply rule does not apply to the vendor of a grandfathered complex.

Subsection 336(3) Transfer of residential condominium unit after 1990.

Subsection 168(5) provides that GST is payable on the purchase of a new residential condominium unit when title to the unit is transferred to the purchaser, or 60 days after registration of the complex, whichever is earlier. GST is not payable, however, if possession is transferred under an agreement for sale before January 1, 1991.

A number of condominium units not scheduled for completion until after 1990 were sold before the release of the draft GST Legislation on October 13, 1989. In these cases, written agreements to purchase the units had been entered into without prior knowledge of the potential GST implications by either vendors or buyers.

To address this situation, subsection 336(3) provides that no GST is payable by a purchaser of a residential condominium unit under a written agreement entered into before October 14, 1989 if possession and ownership of the unit are not transferred until after the GST comes into force.

So as not to unduly complicate the GST transition for builders of grandfathered units, they are still permitted to claim a federal sales tax rebate under subsection 121(3) for the tax embodied in the units on January 1, 1991 in addition to input tax credits under section 169 for GST paid on expenses incurred after 1990 in completing such complexes. However, as a consequence of paragraph (g) in subsection 336(3), the builder is required to remit a special tax equal to 4 per cent of the selling price of any grandfathered condominium units in the complex for the reporting period covering the time at which possession transfers to the purchaser. This ensures that the effective tax content on grandfathered condominium unit sales is approximately the same as it would be if the existing manufacturer's sales tax had continued in place.

Paragraphs 336(3)(e) and (f) are the counterparts to paragraphs (e) and (f) in subsection (2) and similarly avoid the self-supply rules causing GST to be payable by either the vendor or purchaser of a grandfathered property.

Subsection 336(4) Transfer of condominium complex after 1990

This subsection is, in all important respects, identical to subsection 336(3), except that it is in relation to the sale of an entire condominium complex under a written agreement entered into before October 14, 1989. A typical example of this situation is where a limited partnership has agreed to purchase a complex in order to rent out units therein.

In this situation, where ownership and possession of the complex are not transferred to the purchaser before 1991 and, at any time after 1990, ownership of the complex is transferred to the purchaser or the complex is registered as a condominium, no GST is payable by the purchaser in respect of the supply. However, as in subsection 336(3), the supplier is to remit a special tax equal to 4 per cent of the consideration for the sale. However, unlike the case covered in subsection 336(3), this tax is to be remitted for the vendor's return covering the reporting period that includes the day on which ownership of the complex is transferred to the person and the day that is 60 days after the day on which the complex is registered as a condominium, whichever is earlier. This, combined with the fact that the vendor is able to claim a federal sales tax rebate under section 121 on the partially completed complex on January 1, 1991, as well as any input tax credits thereafter, ensures that the effective tax content on grandfathered condominium complexes is approximately the same as it would have been if the existing manufacturer's sales tax had continued in place.

Again, as in the case of subsections 336(2) and (3), should the purchaser of the complex be the "builder" of the complex only by reason of paragraph (d) of the definition "builder" in subsection 123(1), that person shall not be treated as the builder. Further, where the supplier might otherwise be liable for GST under the self-supply rule in subsection 191(1) in respect of any unit in the complex (e.g. if some units were rented out to third parties), the self-supply rule does not apply.

Subsection 337(1) Transfer of personal property before 1991

Subsection 337(1) provides that in the case of a taxable supply of tangible personal property to a person, no GST is payable by the person to the extent that the property is delivered to the person or title therein passes (from anyone other than a licensed wholesaler -- see subsection 118(2)) to the person before 1991 and the consideration for the property is paid or invoiced before May 1991. Therefore, if goods are delivered before January 1, 1991 and paid or invoiced not later than April 30, 1991, no GST will apply. Goods delivered prior to 1991 and neither invoiced nor paid for until after April 1991 are subject to GST.

Subsection 337(2) Continuous supplies

Subsection 337(2) addresses the situation where tangible personal property or services are supplied on a continuous basis by means of a wire, pipeline or other conduit. This would include, for example, telephone services and supplies of natural gas or electricity.

The subsection provides a general prorating rule for continuous supplies straddling the GST start-up date where the consideration is paid or invoiced before May 1991. In this case, GST does not apply to goods or services to the extent they are delivered or rendered before 1991. It should be noted, however, that where payment for a continuous supply is being made under a budget payment arrangement, the special rules contained in section 338 apply.

Subsection 337(3) Idem

This subsection qualifies subsection 337(2) above. It provides that where the consideration for a continuous supply is neither invoiced nor paid until after April 1991, GST is payable in respect of that consideration regardless of when the property or service is delivered, performed or made available. This is consistent with the general rule in subsection 337(1) that supplies neither invoiced nor paid until after April 1991 are subject to GST. However, where payment for a continuous supply is made under a budget payment arrangement, special rules contained in section 338 apply.

Subsection 337(4) Payment before 1991 for subscription

Subsection 337(4) provides that GST does not apply to payments for newspaper, magazine or other periodical subscriptions that are made before 1991. Payments made after 1990 for subscriptions and renewals paid after 1990 are subject to GST.

Subsection 337(5) Supplies after 1990

Subsection 337(5) deals with the situation where an amount is paid or invoiced after August 1990 and before 1991 for goods that are not delivered and title to which does not pass to the purchaser before 1991. In these circumstances, the amount is considered to have become due on January 1, 1991 and not to have been paid before that date. The effect is that GST is payable on that amount.

This provision does not apply with respect to continuous supplies made under a budget payment (i.e., "equal billing" plan) or to subscriptions referred to in subsection 337(4).

Subsection 337(6) Idem

Subsection 337(6) introduces a self-assessment rule that applies to businesses acquiring a taxable supply of property or services after 1990 but an amount is invoiced or paid for the supply between August 1989 (the month in which the Technical Paper on the Goods and Services Tax was released) and September 1990. In these circumstances, GST is payable on that amount. The purchaser is required to file with the Minister of National Revenue (in the prescribed manner) on or before April 1, 1991 a return and remit the tax payable to the Receiver General.

This provision does not apply with respect to amounts that are paid to a manufacturer or licensed wholesaler under an instalment payment plan referred to in subsection 118(3) or (4), to subscriptions referred to in subsection 337(4) or to amounts that are paid to a manufacturer or licensed wholesaler under a budget arrangement or "equal billing" plan to which section 338 applies.

It should also be noted that notwithstanding subsection 337(6), subsections 341(1), 342(1), and 343(1) provide that no GST is payable on certain supplies of services commencing before 1990.

Subsections 337(7) and (8) Prepaid supplies to consumers

The August, 1989 Technical Paper on the Goods and Services Tax stated that either the current federal sales tax or the GST will apply to goods currently subject to federal sales tax. The manufacturer's sales tax generally will not apply to sales of goods where delivery of the goods or transfer of title to the goods occurs after 1990. However, under the transitional provisions, vendors are not required to begin collecting GST on amounts invoiced or prepaid for such supplies to be made in 1991 until September, 1990. As a result, in the absence of any special provisions, it would be possible, in some circumstances, for goods which are currently subject to federal sales to be acquired by consumers on a tax-free basis, to the extent that the supply is prepaid or invoiced before September, 1990.

To address this situation, subsection 337(7) sets out the following rules to apply where amounts are paid or invoiced before September, 1990 for a taxable sale of goods the ownership and possession of which is transferred to a consumer after 1990:

- if the supplier was entitled to a federal sales tax inventory rebate under section 120 in respect of the goods, a portion of that rebate is denied equal to the portion of the total consideration for the goods that was paid or became due (e.g., was invoiced) before September, 1990 (i.e., the portion not subject to GST);
- if the goods are supplied directly to the consumer by a manufacturer or licensed wholesaler who held them on a tax-free basis (in which case, federal sales tax would not apply to the goods since delivery occurs and title transfers after 1990), the supplier is considered to have acquired the goods on January 1, 1991 for the sale price to the consumer. Therefore, the supplier will be required to pay and remit GST on the goods. At the same time, the supplier will be entitled to claim an input tax credit for the deemed purchase, under the normal rules. However, the credit is reduced, by virtue of paragraph 337(7)(a), to the extent that the consideration for the sale to the consumer was not subject to GST (i.e., it was paid or became due before September, 1990).

It should be noted that these rules apply only to sales to consumers as defined under subsection 123(1). As well, they apply only to motor vehicles and "specified property". Specified property includes goods currently subject to federal sales tax and sold for more than $5,000.

Subsection 337(9) Goods returned after 1990

Situations will arise where price adjustments are made following start-up of the GST in respect of supplies made prior to start-up. Examples include deferred quantity discounts, adjustments for goods less than quality or quantity ordered, and exchanges for defective goods. For the most part, these adjustments will have no GST implications. Goods returned in straight exchange for other replacement goods will entail no GST consequences as long as the transaction does not involve the issuance of a credit note or refund to the customer.

This subsection sets out rules that apply where goods sold prior to January 1, 1991 are returned by the customer after that date for a refund or credit against future purchases. In most cases, federal sales tax would have been paid on the goods. Therefore, in the absence of any relieving provisions, the goods would be subject to a degree of double taxation when resold by the supplier after 1991 and subject to GST at that time.

To address this, subsection 337(9) permits the supplier to claim a deduction from net tax determined under section 225 equal to 7/107ths of the amount refunded or credited to the customer's account. This relief is appropriate where the customer is a final consumer of the goods since, in this case, neither the supplier nor the customer would have been entitled to receive a federal sales tax inventory rebate under section 120 for the goods (i.e., they would not have been in any dealer's inventory on January 1, 1991). However, it would not be appropriate to provide both a deduction and an inventory rebate in respect of the same goods had they qualified as tax-paid inventory of any person as of January 1, 1991. To avoid the complexity of the supplier having to show that no person was entitled to an inventory rebate for the returned goods, the supplier is, in all cases, able to claim the deduction in respect of the refund or credit given to the customer. However, to the extent that the customer returning the goods would have been entitled to claim an input tax credit for the purchase of the goods had GST been payable thereon (i.e., to the extent that the goods were for use in a commercial activity), the customer is required to add 7 1/107ths of the amount of the refund or credit to the customer's net tax for the period in which the refund or credit is received. In effect, the business customer is treated as having sold the goods back to the original supplier. This treatment simplifies the operation of the tax since it parallels the treatment of returned goods sold after the GST comes into force (see section 232). Therefore, it is not necessary for either the supplier or the customer to keep track of when a particular returned item was sold which, in many cases, would be difficult (e.g., where an item, such as a tool, lacking specific identification in inventory could have been part of a pre-1991 or post-1991 shipment of such items).

The rules in subsection 337(9) do not apply to sales of zero-rated goods such as medical devices. They also do not apply where the transaction does not involve a price adjustment but is, rather, an outright sale of a used good by a person to a dealer. In the latter case, the rules in section 176 apply.

Subsection 337(10) Supply completed

Generally, any consideration for a taxable supply that has not been paid or invoiced or otherwise become due or been paid before May, 1991 will be subject to GST, regardless of when the supply was made. The general rules for determining the time at which tax is payable are set out in section 168. One of those rules provides that tax is payable no later than the end of the month following the month in which the supply is completed. For this purpose, the supply is considered to have been completed, in the case of a sale of goods delivered to the recipient on a consignment, sale-or-return or similar basis, in the month in which the recipient acquires ownership of the goods or supplies them to another person and, in any other case of a sale of goods, the month in which the recipient acquires ownership or possession of the goods. Subsection 337(10) treats this month of completion as being April, 1991 where the actual month of completion is prior to 1991 to ensure that where a pre-1991 sale becomes taxable by virtue of the consideration not being paid or becoming due until after April, 1991, the tax on that consideration is payable no later than May 31, 1991.

Subsection 337(11) Application

This subsection provides that the rules in section 337 with respect to supplies straddling the start-up date of the GST do not apply to supplies made under a budget payment arrangement (i.e., "equal billing" plan) for which special rules are set out under section 338.

Section 338 Budget payment arrangements

The general prorating rule for transactions straddling the start-up date does not apply to payments for goods or services under budget payment plans. In these instances, GST applies to all amounts invoiced after 1990. However, section 338 provides for a year-end reconciliation so that GST, in effect, applies only to goods delivered or services performed in 1991. The rules in this section apply only where the payment reconciliation takes place before 1992.

Subsection 338(1) Budget arrangements

This subsection requires the supplier of property or services provided during any period beginning before 1991 and ending after 1990, and paid for under a budget payment arrangement providing for a reconciliation of the payments at or after the end of the period, but before 1992, to calculate an amount determined by the formula set out in this subsection. The amount represents the difference between the GST payable only in respect of the property or services that were supplied after 1990, and the tax payable by the recipient in respect of all of the property or services that were invoiced in 1991.

Subsection 338(2) Collection of tax

Where the amount determined under subsection 338(1) is a positive amount (i.e., where the recipient has not paid the full amount of GST payable in respect of the property or services received after 1990), and the supplier of the property or services is a registrant, the supplier is required to collect this amount as tax from the recipient at the time the invoice for the reconciliation is issued.

Subsection 338(3) Refund of excess

Where the amount determined under subsection 338(1) is a negative amount (i.e., the amount of GST paid by the recipient over the period exceeds the tax payable in respect of the property or services received after 1990), and the supplier of the property or services is a registrant, the supplier is required to refund or credit the amount to the recipient and issue an appropriate credit note in accordance with section 232.

Subsection 338(4) Continuous supply

In the case of a continuous supply of property or services under a budget payment arrangement where the time at which the property or services supplied cannot be determined for purposes of calculating the amount determined by the formula set out in subsection 338(1), the supply is to be prorated in equal parts according to the number of days in the period.

Section 339 Progress payments

Where property or services are supplied pursuant to a construction contract, GST does not apply to any part of the consideration for the supply (regardless of when it is paid or becomes due) that relates to property and services provided under the contract before 1991. However, if a progress payment is made or becomes due after August 1989 and before 1991 and is in respect of property and services to be supplied after 1990, GST applies to the payment since it is treated as having become due on January 1, 1991.

Under the rules in section 168, tax in respect of property or services supplied under a construction contract is payable no later than the end of the month following the month in which the construction is substantially completed, except for tax in respect of holdbacks which becomes payable on the earlier of the day the amount held back is paid and the day it becomes payable. Consistent with this treatment, paragraph 339(c) provides that where a contract is substantially completed before December 1990 and part of the consideration is taxable (i.e., relates to property or services supplied after 1990), the completion date is considered to be December 1, 1990. The result is that all tax in respect of the contract (except for tax in respect of amounts held back) becomes payable no later than January 31, 1991.

Section 340 Rent and royalty payments

The transitional rules governing prepaid rents, royalties and similar payments attributable to any period before or after 1990 are outlined in this section.

Subsection 340(1) Prepayment of rent and royalties

Rent, royalty and similar payments that are attributable to a period after 1990 and are paid or invoiced or otherwise become due after August 1990 and before 1991 are subject to GST, if the supplier of the property giving rise to the rent, royalty or other payment is a registrant. The GST in these circumstances is considered to have become collectible by the supplier who, therefore, must account for the tax on the supplier's first GST return in 1991. However, this rule does not apply to lease payments which are grandfathered under subsection 340(3).

Subsection 340(2) Idem

This subsection parallels a similar rule in subsection 337(6) for sales of goods and services. Subject to the special grandfathering rule for certain leases under subsection 340(3), GST is payable on lease payments to the extent the payment is made or becomes due after August 1989 and before September 1990 and is attributable to a period after 1990. In such cases, the recipient must self-assess and remit tax on or before April 1, 1991. This provision does not apply to property leased to consumers.

Subsection 340(3) Rent, etc. paid before 1994 under certain leases

This subsection grandfathers for 3 years payments made under written agreements for the lease of automobiles by any person and for the lease of equipment for use by doctors, dentists and other health care practitioners (as defined in Part II (Health Services) of Schedule V) in the practise of their health care profession, provided the lessee takes possession of the automobile or equipment before 1991. Both lease payments attributable to a period before 1994 and any payments made towards the purchase of the property (e.g., upon exercising a buy-out option) qualify for the grandfathering as long as they are made under a written agreement entered into before 1991 and the payment is made before 1994.

Subsection 340(4) Periods before 1991

Pursuant to this subsection, GST does not apply to any rent, royalty or similar payment attributable to a period before 1991, provided that the amount is paid or invoiced before May 1991.

Subsection 340(5) Application

This subsection provides that the special rules governing rent and royalty payments do not apply to payments associated with the use of intangible personal property where the amount of the payments does not vary with the amount of or profit from the use of or production from the property. For instance, a lump sum payment paid in 1990 to an author for all the rights associated with a book written by the author is not subject to GST.

Subsection 340(6) Agreements before August 8, 1989

Under this subsection, GST does not apply to any consideration payable under a written agreement in respect of the lease of tangible personal property (if the property is a capital property of the supplier), where the agreement is entered into before August 8, 1989 -- the date on which the GST Technical Paper was released. Relieved under this provision are both lease and lease buy-out payments.

Subsection 340(7) Variation of agreement

The purpose of subsection 340(7) is to ensure that the special transition provision in subsection 340(6) which provides relief from payment of the GST in respect of certain lease agreements entered into before August 8, 1989 do not apply where the agreement is renewed, varied or altered on or after that date.

Section 341 Services

This section provides the transitional rules for services (other than transportation services) which are partially or fully performed before 1991 as well as for prepaid services which are performed after 1990.

Subsection 341(1) Services before 1991

A service (other than a transportation service) which is substantially or entirely performed before 1991 is not subject to GST as long as the consideration in respect of the service is paid or invoiced before May 1991.

Subsection 341(2) Idem

Where a service (other than a transportation service) is partly, but not substantially, performed before 1991 and partly performed after 1990, this subsection provides that GST does not apply to any consideration for that part of the service performed before 1991, provided that the consideration is paid or invoiced prior to May 1991.

Subsection 341(3) Services after 1990

Pursuant to this subsection, unless substantially all of a service (other than a transportation service) is performed before 1991 (see subsection 341(1)), GST applies to the consideration paid or invoiced or otherwise becoming due after August 1990 and before 1991 that relates to that part of the service provided after 1990. Consideration paid or becoming due after August 1990 and before 1991 is treated as having been invoiced on January 1, 1991 and as not having been paid before that date. Thus, tax in respect of that consideration becomes payable on January 1, 1991.

Subsection 341(4),(5) Memberships and admissions

This subsection treats the supply of a membership in a club, an organization or an association (but not the supply of a right to acquire such a membership) and the supply of an admission to a place of amusement, a seminar, an activity or an event as a supply of a service for purposes of the transitional provisions. As a result, the GST treatment of services supplied in the transition period apply to memberships and admissions. While this means that the normal prorating rules apply to memberships, a special rule is provided in section 345 for lifetime memberships. An initiation fee for the right to acquire a membership for a period is treated as consideration for a supply of intangible property. Therefore, GST does not apply to such fees paid before 1991.

Subsection 341(5) Combined supply

The timing of liability for tax under Part IX on domestic supplies depends on whether the supply is of a service, goods or real property. Where a combination of these are supplied for a single amount, subsection 168(8) ensures that the supply is treated as a single supply with the tax liability arising at a single point in time. Subsection 341(5) provides that where a combined supply includes property which is not subject to tax under Part IX of the Act as a result of the transitional rules, the transfer of that property will not determine the timing of any liability for tax on the remainder of the supply. For example, suppose a person purchases several computers together with computer training services for staff under one contract that provides for the delivery of the computers in November 1990, the training to commence in January 1991, and a single payment for both that is due upon the completion of the training on January 31, 1991. Since delivery of the computers occurs prior to 1991, the portion of the payment attributable to the computers is not subject to GST. As the training is performed entirely in 1991, the portion of the payment attributable to this service is taxable. However, in the absence of any overriding provisions, since the computers would be of greater value than the training, subsection 168(8) would suggest that tax on the training is payable in the month following delivery of the computers -- that is, in December 1990 which is before the start-up of the GST. Subsection 341(5) treats the supply of the training as though it were a separate supply. As a consequence, the tax on the training services is payable when the payment becomes due on January 31, 1991.

Subsection 341(6) Application

Subsection 341(6) provides that the transitional rules set out in section 341 do not apply where the rules in section 338 relating to budget payment arrangements apply.

Sections 342 and 343 Transportation services

Special transitional rules are provided for transportation services in these sections. The rules governing passenger transportation services are set out in section 342. Freight transportation services are dealt with in section 343. These rules are intended to simplify the transition to the new tax for the suppliers of transportation services.

Subsection 342(1) Transportation of individuals

Under this subsection, a passenger transportation service commencing before 1991 and ending before February 1991 is not subject to GST, provided the consideration for the service is paid or invoiced before May 1991.

Subsection 342(2) Idem

Under this subsection, any passenger transportation service which begins before 1991 and ends after January 1991, and in respect of which the consideration is paid or invoiced after August 1990 and before May 1991, is subject to GST on 50 per cent of the consideration for the service.

Subsection 342(3) Transportation pass

The one instance where the general prorating rule for services straddling the start-up date applies to transportation services is in the case of transportation passes. Under subsection 342(3), tax applies on a prorated basis in respect of transportation passes that are valid for any period extending from before 1991 to beyond January 1991, if the consideration for the pass is paid or invoiced after August 1990 and before May 1991.

Subsection 343(1) Freight transportation services

Under this provision, any continuous freight transportation service beginning before 1991 is not subject to GST, provided the consideration for the service is paid or invoiced before May 1991.

Subsection 343(2) Freight transportation services after 1990

Freight transportation services provided entirely after 1990, but prepaid any time after August 1990 and before 1991, are subject to GST. The consideration for freight transportation services beginning in 1991 which is paid or invoiced after August 1990 and before 1991 is, under this subsection, considered to be invoiced on January 1, 1991 and not to have been paid before that date. As a consequence, GST on the amount paid or invoiced becomes payable on January 1, 1991.

Section 344 Funeral services

The purpose of section 344 is to provide greater certainty in the application of the rules governing prepaid supplies to funeral services. Funeral services supplied after 1990 pursuant to a contract entered into prior to September 1, 1990 are not subject to GST.

For purposes of this section, "funeral services" includes the provision of any property, including a burial plot, coffin or headstone, relating to the funeral, burial or cremation of an individual provided under a funeral service arrangement.

Subsection 344(2) exempts from the GST prepaid funeral services supplied after 1990 where the arrangement for the funeral services is entered into before September 1990 and the funds for the arrangement are held by a trustee who is responsible for acquiring the funeral services. Subsection 344(3) states that GST does not apply to the consideration for funeral services where a written contract for the provision of these services was entered into prior to September 1990.

Section 345 Lifetime memberships

This section deals with the GST treatment of lifetime memberships partially or totally paid after August 1990 and before 1991. Because of the obvious difficulties associated with attempting to prorate a lifetime membership, this section is intended to simplify the transition to the new tax by treating any amount of the consideration for the membership paid after August 1990 and before 1991 that exceeds 25 per cent of the total consideration for the membership as being invoiced on January 1, 1991 and as not having been paid before that date. Consequently, if the total consideration for the supply of a lifetime membership is paid after August 1990 and before 1991, only 75 per cent is subject to the tax.

Section 346 Transitional credit

In recognition of the costs involved in preparing for the introduction of the GST, this section provides a one-time transitional credit of up to $1,000 for small business. This credit is available to businesses which are required to become GST registrants and which have annual sales of $2 million or less.

Subsection 346(1) Transitional credit for small business

This subsection provides for the payment of a specified amount, as determined in subsection 346(2), to small business registrants. The payment is limited to persons, other than a listed financial institution referred to in paragraph 149(1)(a), who make taxable supplies of less than $500,000 in their first fiscal quarter of 1991 or in any 3-month period beginning in 1990 throughout which the person carried on business. Therefore, if, for example, a registrant operating a business in which sales tend to be higher in the first quarter than at other times of the year, has sales exceeding $500,000 in the first quarter of 1991, the registrant will still qualify for the credit if sales revenue from the business over any three-month period beginning in 1990 is below the threshold.

For persons filing on a monthly or quarterly basis, the payment is to made by way of a deduction from the amount of GST the person is otherwise required to remit for the reporting period that includes the last month of the registrant's first full fiscal quarter in 1991. In the case of annual filers, the credit is obtained by filing an application for a rebate with the Minister of National Revenue.

Subsection 346(2) Specified amount

This subsection provides that a registrant's transitional credit is to be $300 plus 2% of taxable supplies over $15,000 in any quarter beginning after 1989 and before April, 1991, to a maximum of $1,000. Where the registrant is a member of a group of associated persons, the sum of all the credits of the members of the group is to be limited to $1,000.

Subsection 346(3) Application for rebate

Registrants who are annual filers and qualify for a rebate of the transitional credit must apply for the rebate no later than the day the registrant is required to file a return for the registrant's first fiscal year beginning after 1990.

Subsection 346(4) Application of provisions

The provisions of Division VI apply to section 364 as if the rebates of the transitional credit for small business were paid or payable under that Division. These provisions set out the rules relating to the application for and payment of the GST rebates.

SUBCLAUSE 12(2) Commencement

This subclause is the coming-into-force provision for Part IX of the Excise Tax Act under which the GST is imposed. Subject to the GST transitional provisions in Division IX, Part IX applies to supplies where any part of the consideration for the supply is invoiced or otherwise becomes due after 1990 and is not paid before 1991. However, GST is not payable on any part of the consideration that is paid or becomes due before 1991 unless otherwise provided under the special transitional provisions in Division IX. Part IX also applies to sales of real property the ownership or possession of which is transferred after 1990 and any supplies that are treated under the Act as having been made or in respect of which the supplier is treated as having collected tax. Finally, Part IX applies to goods imported under the provisions of the Customs Act after 1990 and to supplies in respect of which the GST applies by virtue of the transitional provisions contained in Division IX.

SUBCLAUSE 12(3) Application of anti-avoidance rule

The general anti-avoidance rule, set forth in section 274 of Part IX, is applicable to all transactions occurring after March 1990 which are related to Part VIII (federal sales tax rebates) and to Part IX (GST).

CLAUSE 13

Schedule I, Sections 1 to 4 Certain excise taxes repealed

This clause repeals the excise taxes on the products enumerated in sections 1 to 4 of Schedule I to the Excise Tax Act. These include lighters, coin-operated amusement devices, smokers' accessories and matches. The amendment comes into force on January 1, 1991.

CLAUSE 14

Schedule I, Paragraphs 8(b) and (c) Non-application of excise tax to certain air conditioners for motor vehicles

Relief from the excise tax on air conditioners for motor vehicles or installed in motor vehicles is currently provided in circumstances where the air conditioner or motor vehicle in which it is installed is sold exempt from federal sales tax. As the manufacturer's sales tax will no longer apply after 1990, paragraphs 8(b) and (c) of Schedule I are being amended.

After 1990, relief from the excise tax on air conditioners for motor vehicles is available only where the air conditioner or the vehicle in which it is installed is sold under conditions that would qualify the sale as a zero-rated supply under the GST. The amendment comes into force on January 1, 1991.

CLAUSE 15

Schedule I, Section 10 Non-application of excise tax to certain motor vehicles

Currently, relief from the excise tax on heavy automobiles is provided where the vehicle is sold exempt from federal sales tax.

As per clause 14, this amendment provides that, after 1990, relief from the excise tax on heavy automobiles will be provided where the vehicle is sold under conditions that would qualify the sale as a zero-rated supply under the GST. The amendment comes into force on January 1, 1991.

CLAUSE 16

Schedule II, Section 1 Adjustments to tobacco excise taxes

This amendment to section 1 of Schedule II to the Excise Tax Act increases the rates of excise tax imposed under that Act on cigarettes and manufactured tobacco.

These rate adjustments will maintain aggregate government revenues from sales and excise taxes and duties on these products at existing levels, offsetting the substantial reduction in sales tax revenues that will, occur as a result of the replacement of the 19 per cent manufacturer's sales tax with the 7 per cent goods and services tax. The amendment comes into force on January 1, 1991.

CLAUSE 17

Schedule III, Section 28 Sales tax exemption on electronic point-of-sale and related inventory control equipment

This amendment to Schedule III to the Excise Tax Act introduces an exemption from the manufacturers' sales tax for certain cash registers, electronic point-of-sale equipment and related inventory control equipment. This exemption is effective December 19, 1989. It complements the 100 per cent capital cost allowance for this equipment announced in the Goods and Services Tax Technical Paper. Taken together, these two provisions will reduce the after-tax cost of acquiring the technology required to accommodate the GST at the retail level by approximately 20 per cent.

CLAUSE 18

Schedules V to VII

This clause amends the Excise Tax Act by adding thereto Schedules V to VII. These schedules list exempt supplies, zero-rated supplies and non-taxable importations under the GST.

Consequential Amendments

Part II: Customs Act

CLAUSES 19 to 21

These consequential amendments to the Customs Act relate to provisions of that Act providing for refund, abatement or drawback of "duties" -- under the existing definition of that expression in the Customs Act -- under stated conditions. That definition includes "... taxes levied on imported goods under ... the Excise Tax Act...".

The purpose of the amendments is to exclude, from the expression "duties", GST levied under Part IX of the Excise Tax Act where the object of a customs provision is the refund, rebate or drawback of "duties". GST is payable on importations of goods under section 212 of the Excise Tax Act. However, where it is paid by a business for use in a commercial activity, that business is able to recover the GST through the input tax credit mechanism, the basic rules for which are contained in sections 169 and 170 of the Excise Tax Act. In the absence of these amendments, the Customs Act would also permit recovery of GST paid on importations of goods, thus potentially resulting in double recovery of GST.

These amendments to the Customs Act come into force on January 1, 1991.

CLAUSE 19

Subsection 2(1) Definition "duties"

This amendment excludes GST from the meaning of "duties" where that expression is used in the respective section, subsection or paragraph identified in the amended definition "duties" in subsection 2(1) of the Customs Act.

CLAUSE 20

Section 79.1 Certain duties not included

This new section of the Customs Act provides that any abatement or refund of duties referred to in sections 78 and 79 of that Act excludes a rebate or refund of GST.

CLAUSE 21

Section 85 Certain duties not included

This clause permits regulations contemplated under this section of the Customs Act to be made for drawback purposes without application to GST that has been paid.

Part III: Customs Tariff

CLAUSES 22 to 32

These consequential amendments to the Customs Tariff -- as in the case of the amendments to the Customs Act above -- are with respect to provisions allowing remission, refund or drawback of "duties". The general purpose of the amendments is to exclude application of relief thereunder to any goods and service tax (GST) that was paid or payable.

These amendments come into force on January 1, 1991.

CLAUSE 22

Section 66 Definitions

The definition "excise taxes" under the Customs Tariff is limited to the excise taxes imposed under Parts III and IV of the Excise Tax Act, i.e., taxes other than GST. The definition "goods and services tax" has been introduced into the section for purposes relating to the duties relief provisions of Part II of the Customs Tariff.

CLAUSE 23

Subsection 74(3) Relief for machinery and equipment on list

In the circumstances to which section 74 of the Customs Tariff applies to an importation of certain machinery and equipment, no customs duty is payable. Subsection 74(3) is introduced to establish the value of the goods that is to be used, in these circumstances, for calculating the GST payable on the importation.

CLAUSE 24

Subsection 75.1(2.1) Relief for machinery and equipment on the Free Trade list

Subsection 75.1(2.1) is introduced into the Customs Tariff for the same reasons as indicated above for subsection 74(3) except that it applies in the case of importations of machinery and equipment described in the Free Trade list.

CLAUSE 25

Section 84 Relief for imported goods subsequently exported

This amendment precludes relief from GST under this section of the Customs Tariff; rather, GST relief arises through the input tax credit mechanism provided in Part IX of the Excise Tax Act or by way of a regulation issued pursuant to subsection 215(2) of the Excise Tax Act where partial relief only is to be granted.

CLAUSE 26

Section 86 Release of imported goods

This amendment to section 86 of the Customs Tariff is to ensure that, if there is any GST payable on an importation of goods qualifying for duties relief under section 84 of that Act, such GST must be accounted for (in accordance with section 32 of the Customs Act) in respect of any release of the goods.

CLAUSE 27

Subsection 93(3) Exception

Subsection 93(3) is introduced into the Customs Tariff to provide that, notwithstanding a remission of customs duty granted in respect of an importation of goods (under Part II of the Customs Tariff), for purposes of calculating the value of the goods on which GST is payable -- see subsection 215(1) of the Excise Tax Act -- that value is to be determined as if such relief from customs duty had not been granted. (Customs duty is the customs duty imposed under Part I of the Customs Tariff.)

The amendment makes an exception, however, in the case of importations qualifying under section 88 of the Customs Tariff. That section deals with the situation where goods are returned to Canada after having been repaired abroad or had equipment added abroad and which goods initially had been exported from Canada under customs supervision for that express purpose.

CLAUSE 28

Paragraphs 97(a) to (c) Relief for obsolete or surplus goods

Section 97 of the Customs Tariff applies in respect of recovery of duties paid on imported goods subsequently found to be obsolete or surplus to requirements, to have not been used for any purpose in Canada and to have been destroyed under customs supervision. The amendments to paragraphs (a) to (c) are required to ensure that any GST paid on such goods is not to be recovered through the tariff provisions.

CLAUSE 29

Subsection 100(1) Relief by way of refund

Subsection 100(1) is a refund provision in respect of duties that were paid on goods imported. The amendment is to ensure that a refund of GST is excluded from the provision as any GST relief will be by way of provisions in Part IX of the Excise Tax Act.

CLAUSE 30

Section 104 Waivers

Section 104 of the Customs Tariff permits the rights to duties recoveries under that Act to be transferred by waivers. The amendment to section 104 is to ensure that, if there is any right to recovery of GST paid on goods imported, it cannot be transferred by means of such waivers.

CLAUSE 31

Paragraphs 105(2)(c) and (d) Merchantable scrap or waste

This amendment to paragraphs (c) and (d) of subsection 105(2) of the Customs Tariff is to ensure that the references therein to "rate of duties" means the rate of customs duties and does not include GST. Any GST payable will be levied through the operation of the provisions of Part IX of the Excise Tax Act.

CLAUSE 32

Subsection 107(1) Interest

Subsection 107(1) of the Customs Tariff provides for the payment of interest in respect of duties that were paid on imports but for which a drawback or refund claim has been filed. The amendment to this subsection is to clarify that such amounts of duties are exclusive of any GST paid and the interest calculation, where applicable, must be limited to this extent.

Part IV: Excise Act

CLAUSES 33 to 36

These clauses amend the schedule to the Excise Act which enumerates the excise duties on spirits, beer and tobacco products. Clause 33 increases the excise duties on distilled spirits and on spirit coolers. The excise duties on all types of beer are increased in clause 34 and the excise duty on raw leaf tobacco is increased in clause 35. These increases are all effective on January 1, 1991.

These adjustments are necessary to maintain current federal revenues from each of the product categories identified and to ensure that unintended shifts do not occur in the relative tax burden on different but competing product categories. Similar adjustments are made in clause 7 to the excise taxes on wine, and in clause 16 to the excise taxes on cigarettes and manufactured tobacco.

Part V: Income Tax Act

CLAUSE 37

Subsections 6(1)(e.1), (7) and (8) Employee benefits

Section 6 of the Income Tax Act provides that certain amounts received as employee benefits are to be included in computing the income of employee. Pursuant to new subsection 6(7) (described below), the value of a benefit in respect of property or a service provided to an employee is to be determined net of any GST on the property or service. Except where the supply of the property or service is a zero-rated or exempt supply, new paragraph 6(1)(e.1) requires an additional amount to be added to the income of the employee equal to 7 per cent of the value of the employee benefit net of any applicable provincial tax in respect of the property or service, such as provincial retail sales tax, that is a prescribed tax under section 154 of the Excise Tax Act. This generally results in the employee being required to include in income the amount of GST that would have been payable in respect of the benefit had the property or service been purchased in the marketplace. The exclusion for zero-rated supplies (such as groceries) and exempt supplies (such as group life insurance) removes from this rule those benefits that would not be taxable under the GST if the employee were to acquire the property or service directly.

New subsection 6(7) provides that, in calculating the amount of a benefit required by paragraph 6(1)(a) or (e) to be included in computing the income of an individual from an office or employment, where the amount of the benefit is determined by reference to the cost of the property or service to a person, that cost shall be determined without reference to any GST payable in respect of the property or service by the person. This ensures that the amount included in the employee's income is the same whether or not the employer has been entitled to recover the GST by way of an input tax credit or a rebate.

New subsection 6(8) provides rules governing the tax treatment of a GST rebate received by an employee in respect of an amount deducted by the employee under section 8. As a general rule, the GST will be included in determining the cost to an employee of any taxable property or service for which a deduction is permitted by section 8 in computing the income of the employee from an office or employment. New subsection 6(8) applies where an employee has claimed a deduction permitted under section 8 in respect of an expense or in respect of the capital cost of property (such as an automobile) and the employee has, in a taxation year, received a GST rebate in respect of the deduction. Where the rebate is in respect of an expense, the rebate is included in computing the income of the employee for the taxation year in which the rebate is received. Where the rebate is in respect of the capital cost of property, the rebate reduces the capital cost of the property at the time the rebate was received.

Example 1

Assume that, throughout a year, an employer makes available to an employee an automobile which the employer acquired for $20,000 (plus $1,400 GST and provincial sales tax (PST) on $21,400 equal to $2,140). Assume further that the employer claims an input tax credit in respect of the vehicle equal to the full $1,400. For the purpose of calculating the stand-by charge under paragraph (6)(1)(e), the capital cost of the vehicle to the employer is therefore $22,140. The amount included in the employee's income for the year under paragraph 6(1)(e) is $5,313.60 ($22,140 x 24%). The amount included in the employee's income under paragraph 6(1)(e.1) is $336 (7% x 24% x ($22,140 - $2,140)). Another way to calculate the amount added under paragraph (e.1) is to multiply the factor .07(1-PST rate) by the benefit added under paragraph (e) (i.e., .07(1-.1) x $5313.60).

Example 2

Assume an employee deducted $5,350 ($5,000 + $350 GST) for the 1991 taxation year under section 8 in respect of certain property or services. The employee receives a GST rebate of $350 in the employee's 1992 taxation year in respect of the property or services. The employee would therefore be required to include $350 in income under paragraph 6(8)(c) for the 1992 taxation year.

Example 3

Assume an employee purchased an automobile in March 1991 for a GST-included price of $20,000 in circumstances in which capital cost allowance (CCA) may be claimed by the employee under paragraph 8(1)(j). CCA deducted by the employee for the 1991 taxation year in respect of the automobile was $3,000 ($20,000 X 15/100). The employee's GST rebate in February 1992 is $196 ($3,000 X 7/107). Under paragraph 6(8)(d), the capital cost for the 1992 taxation year is considered to be $19,804 ($20,000-$196). The undepreciated capital cost of the automobile for 1992 in respect of which CCA may be claimed for 1992 is therefore $16,804 ($19,804-$3,000).

These amendments to section 6 are applicable to the 1991 and subsequent taxation years.

CLAUSE 38

Subsection 8(11) GST Rebate

New subsection 8(11) of the Income Tax Act provides that, for the purposes of sections 6 and 8, a GST rebate paid or payable to a taxpayer shall be deemed not to be a reimbursement received by the taxpayer or to which the taxpayer is entitled. This amendment ensures that expenses which a taxpayer is entitled to deduct under section 8 will include any GST paid by the taxpayer and included in such expenses. The treatment of the rebate for income tax purposes is described in the commentary on section 6 and illustrated in example 3 thereof.

This amendment is applicable to the 1991 and subsequent taxation years.

CLAUSE 39

Paragraph 12(1)(x) and Subsection (2.2) Inducements, etc.

Paragraph 12(1)(x) of the Income Tax Act provides that certain inducements, reimbursements, contributions, allowances and assistance received by a taxpayer will be included in income. This paragraph requires that such amounts received in the course of earning income from a business or property which have not reduced the cost or capital cost of the related property or the amount of the related expense will be included in income unless the taxpayer elects to reduce the cost or capital cost, as the case may be, of the property under subsection 13(7.4) or 53(2.1).

Paragraph 12(1)(x) is amended to clarify that reimbursements, contributions and allowances or assistance received in respect of an outlay are subject to the application of paragraph 12(1)(x) on the same basis as such amounts received in respect of an expense. This amendment is applicable in respect of amounts received after January 1990.

The amendment to subparagraph 12(1)(x)(v) ensures that no income inclusion is required under paragraph 12(1)(x) in respect of an amount that is deducted in computing any balance of undeducted outlays, expenses or other amounts under the Income Tax Act. Thus, for example, assistance that reduces the "pool" of expenditures in respect of scientific research and experimental development under section 37 is not included in income under paragraph 12(1)(x). The amendment to this paragraph is clarifying only and is applicable in respect of amounts received on or after May 23, 1985, the date on which paragraph 12(1)(x) became effective.

Paragraph 12(1)(x) is also amended, in conjunction with the introduction of subsection 12(2.2), to provide that a taxpayer may elect to reduce an outlay or expense (other than an outlay or expense in respect of the cost of property) where reimbursements, contributions, allowances or assistance which would otherwise be included in income under paragraph 12(1)(x) are received in respect of the outlay and expense. Such election is required to be made by the filing date for the taxpayer's income tax return for the taxation year of such receipt or, if the related outlay or expense is not incurred until the following taxation year, by the filing date for the return for that following year. The election applies only where the outlay or expense is made or incurred not more than three taxation years before or one taxation year after the taxation year of the related receipt. The amount so elected (up to the amount of the related receipt) reduces the amount of the receipt that would otherwise be required to be included in income under paragraph 12(1)(x). It is intended that subsection 12(2.2) apply only in those cases where the set-off of an expense or outlay against a related receipt does not otherwise result from the application of general principles and subparagraph 12(1)(x)(vi). This amendment is applicable in respect of amounts received after January 1990.

Paragraph 12(1)(x) is further amended by substituting the word "and" for the word "or" at the end of subparagraph (vii) thereof. This amendment clarifies that an income inclusion of paragraph 12(1)(x) does not result if the inducement, contribution, allowance or assistance to which subparagraph 12(1)(x)(iii) or (iv) applies is otherwise included in income, or reduces the related cost, capital cost, outlay or expense by reason of general principles or an election under the Act. This amendment is applicable in respect of amounts received after January 1990.

Paragraph 12(1)(y) Automobile provided to partner

Paragraph 12(1)(y) of the Income Tax Act imposes a standby charge on an individual who is a member of a partnership or an employee of a member of a partnership and who is entitled to make personal use of an automobile provided by the partnership. Where a partnership makes an automobile available to such an individual or to a person related to the individual, paragraph 12(1)(y) requires the inclusion in the income of the individual of an amount equal to the standby charge that would, by reason of paragraph 6(1)(e), be included in the individual's income if the individual were employed by the partnership.

Paragraph 12(1)(y) is amended to add a reference to new paragraph 6(1)(e.1). This amendment requires a taxpayer to include in income under paragraph 12(1)(y) an additional amount equal to 7 per cent of the standby charge net of provincial sales tax. Accordingly, the treatment of an individual who is entitled to make personal use of an automobile provided by a partnership is consistent with the treatment of an individual who has an automobile made available by the individual's employer. See the commentary on new paragraph 6(1)(e.1).

This amendment is applicable with respect to taxation years and fiscal periods ending after 1990.

CLAUSE 40

Subsections 15(1.3) and (1.4) Shareholder benefits

Subsection 15(1) of the Income Tax Act requires a shareholder to include in income the amount or value of certain benefits conferred upon the shareholder by a corporation. New subsection 15(1.3) provides the same rule for shareholder benefits as is provided with respect to employee benefits under new subsection 6(7). It provides that, for the purposes of determining the value of any benefit required by subsection 15(1) to be included in computing the shareholder's income for a year, to the extent that the benefit is determined by reference to the cost to a corporation of a property or service, the cost is to be determined without reference to any GST payable by the corporation in respect of the property or service.

New subsection 15(1.4) operates in a manner similar to new paragraph 6(1)(e.1). It provides that, where subsection 15(1) requires the amount or value of a benefit to be included in computing the income of a shareholder in respect of a supply (other than a zero-rated supply or an exempt supply) of a property or service that is taxable under the GST, the taxpayer must also include in income an amount equal to 7 per cent of the amount or value of the benefit which is required by subsection 15(1) to be included in computing the taxpayer's income net of any provincial tax, such as provincial sales tax, prescribed under section 154 of the Excise Tax Act. This generally results in the shareholder being required to include in income the GST that would have been payable in respect of the benefit had the property or service been purchased in the marketplace.

These amendments are applicable with respect to benefits conferred after 1990.

CLAUSE 41

Paragraph 20(1)(hh) Repayments of inducements, etc.

Paragraph 20(1)(hh) of the Income Tax Act is related to paragraph 12(1)(x) which requires the inclusion in income of certain amounts received by a taxpayer as an inducement or as a reimbursement, contribution, allowance or assistance in respect of the acquisition of property or an outlay or expense. Paragraph 20(1)(hh) allows for a deduction where an amount, previously included in income by reason of paragraph 12(1)(x), is required to be repaid.

Paragraph 20(1)(hh) is amended to provide a deduction in computing income for amounts required to be repaid in respect of a particular amount that is by reason of subparagraph 12(1)(x)(vi) or subsection 12(2.2) not included in income under paragraph 12(1)(x). The particular amount is required, however, to relate to an outlay or expense (other than an outlay or expense that is in respect of the cost of property or that is, or would be if the taxpayer had sufficient income of the required character, be deductible under section 66, 66.1, 66.2 or 66.4) that would, but for the receipt of the particular amount, have been deductible in computing the income of the taxpayer for the year of repayment or a preceding taxation year.

This amendment will generally apply, for example, if a taxpayer repays an input tax credit that relates to the supply of a service. The earlier receipt of that input tax credit may generally assumed not to result in an income inclusion under paragraph 12(1)(x) (by reason of subparagraph (vi) thereof) because the GST-included cost of that supply for income tax purposes would be reduced by tne amount of the credit. The repayment of the input tax credit in these circumstances would be deductible under paragraph 20(1)(hh). In this regard, see also the commentary on new subsection 248(17).

This amendment is applicable in respect of amounts repaid after January 1990.

Paragraph 20(1)(kk) Exploration and development grants

Paragraph 20(1)(kk) of the Income Tax Act provides a deduction for a taxpayer in respect of the amount of assistance or benefit received as a deduction from, or reimbursement of, an expense that is a tax or royalty. The deduction is available only where two conditions are satisfied. First, the tax or royalty to which the assistance or benefit relates is required to have been an amount that would have been deductible by the taxpayer in computing income if the assistance or benefit had not been received. Second, the assistance or benefit is required to result in the reduction of the taxpayer's cumulative Canadian exploration expense, cumulative Canadian development expense or cumulative Canadian oil and gas property expense. The purpose of this rule is to prevent the effective double taxation of assistance or benefit when it reduces any such cumulative expense.

Paragraph 20(1)(kk) is amended to ensure that a deduction is not available in respect of any assistance or benefit received by a taxpayer where the tax or royalty to which it relates is deductible in computing the income of the taxpayer. This amendment is applicable in respect of amounts received after January 1990.

Paragraph 20(1)(kk) is also amended so that it does not apply to the receipt of input tax credits and rebates in respect of the GST. This amendment is applicable after 1990.

CLAUSES 42 to 44

Subparagraphs 66.1(6)(b)(iv.1), 66.2(5)(b)(iii.1) and 66.4(5)(b)(iii.1)

Resource expenses

Sections 66.1, 66.2 and 66.4 of the Income Tax Act allow for deductions in respect of a taxpayer's cumulative Canadian exploration expense, cumulative Canadian development expense and cumulative Canadian oil and gas property expense, respectively. Amounts of assistance related to such expenses reduce these cumulative accounts. New subparagraphs 66.1(6)(b)(iv.1), 66.2(5)(b)(iii.1) and 66.4(5)(b)(iii.1) are introduced to ensure that the cumulative accounts are correspondingly increased where such assistance is repaid pursuant to a legal obligation. Because of the rule in new subsection 248(17), the repayment of assistance would include the repayment of an input tax credit by a taxpayer pursuant to an assessment under Part IX the Excise Tax Act.

These amendments are applicable in respect of amounts repaid after January 1990.

CLAUSE 45

Section 80.2 Reimbursement by taxpayer

Section 80.2 of the Income Tax Act is a special rule which applies where a taxpayer reimburses another person in respect of a Crown resource royalty payable by the other taxpayer. Where the reimbursing taxpayer is resident in Canada or carrying on business in Canada, that taxpayer is treated as not having made the reimbursement but is treated as having paid a non-deductible Crown resource royalty equal to the amount of the reimbursement. In addition, the recipient of the reimbursement is treated as not having received it. As a consequence, the reimbursing taxpayer is denied a deduction in respect of such reimbursement and the recipient of the reimbursement would not be required to include the amount of such reimbursement in computing income.

Section 80.2 is amended to ensure that the rules provided thereunder extend to amounts characterized as contributions or allowances paid in respect of non-deductible Crown royalties where such amounts cannot be characterized as reimbursements. This amendment is related to the amendments to paragraph 12(1)(x) and the introduction of subsection 12(2.2). It would ensure, for example, that the rules denying the deduction of Crown royalties cannot be circumvented by allowing the recipient of an amount characterized as a contribution or allowance in respect of Crown royalties to eliminate an income inclusion under paragraph 12(1)(x) in respect of the receipt by reason of an election under subsection 12(2.2).

Section 80.2 is further amended to ensure that a reimbursing taxpayer may not claim a deduction in respect of an amount payable, if the amount payable relates to a payment to which the rules in section 80.2 apply. A corresponding amendment ensures that a taxpayer is not required to include an amount in income by reason of becoming entitled to receive such a payment.

These amendments are applicable in respect of payments made after January 1990.

CLAUSE 46

Subsection 117.1(1) Annual adjustment

Subsection 117.1(1) of the Income Tax Act, which provides for the indexing of various amounts, is amended as a consequence of the introduction of the GST credit. It is amended to provide for the indexing of the amounts of $100 and $190, being the amounts used in determining the GST credit under section 122.5. These amounts will be indexed annually starting with claims based on tax returns filed for the 1991 taxation year. The increase in these amounts will be based on the annual increases in the Consumer Price Index in excess of 3%.

CLAUSE 47

Section 122.4 Refundable federal sales tax credit

Section 122.4 of the Income Tax Act, which provides for a refundable federal sales tax credit, is repealed as a consequence of the introduction of the GST credit. The repeal of the FST credit is effective for the 1991 and subsequent taxation years.

CLAUSE 48

Section 122.5 GST credit

New section 122.5 of the Income Tax Act provides the rules for determining the GST credit for individuals. The new section provides a refundable tax credit of $190 to eligible individuals. An individual may also be entitled to additional credits: $190 for a qualified relation (such as the individual's spouse) or for a dependant under 19 years of age in respect of whom the individual claims an equivalent-to-married credit, and $100 for each other person under 19 years of age who is wholly dependent on the individual or the individual's spouse. A single individual (one with no qualified relation) may claim an additional credit equal to 2% of income in excess of the basic personal amount for the year ($6,169 for 1990) up to a maximum of $100. The individual's total credit in respect of a taxation year is reduced by five cents for each dollar of income that the taxpayer and the taxpayer's qualified relation have in the year in excess of an indexed threshold ($24,769 for 1990). This threshold is the same as that used for the purposes of the refundable child tax credit.

For the purposes of the GST credit, an "eligible individual" is defined in subsection 122.5(1) as an individual (other than a trust) resident in Canada who is married, a parent or at least 19 years old at the end of the year. A "qualified relation" of an individual is generally defined as a person of the opposite sex who is the individual's spouse or, where the individual and another person are the parents of a child, that other person. An individual living separate and apart from the individual's spouse at the end of a year by reason of a marriage breakdown is treated as not being a qualified relation of that individual for that year. As a result, both the spouse and the individual could claim separate GST credits in these circumstances.

Subsection 122.5(2) provides that individuals who, at the end of the year, are confined to a prison or similar institution for more than six months are not eligible for the credit. Similarly, the credit is not available in respect of deceased taxpayers and to officers or servants (including members of their families and servants) of the government of a foreign country who are not subject to income tax under Part I of the Income Tax Act.

Under subsection 122.5(3), to receive a credit for a taxation year, an eligible individual must complete a form that must be filed with individual's income tax return for the year. The credit of an individual for a taxation year is considered to be paid by the individual on account of the individual's tax for the year during months specified for that purpose in subsection 122.5(4).

Subsection 122.5(4) stipulates that the months specified for a particular taxation year are July and October of the immediately following year and January and April of the second following year. The GST credit will thus generally be paid in four instalments: the first two payments being made in July and October of the year following the particular taxation year and the last two payments in the following January and April. For example, the credit computed on the basis of the 1990 tax return will be paid in July and October 1991 and in January and April 1992. However, for the credit based on the return of income filed for the 1989 taxation year, the specified months in which GST credit instalments will be paid are December 1990 and April 1991.

Subsection 122.5(5) provides that, where an individual is a qualified relation of another individual, only one individual may claim the GST credit. However, the individual making the claim is entitled to the additional $190 credit in respect of the qualified relation. For credits claimed in returns filed for the 1989 and 1990 taxation years, the individual claiming the new credit has to be the same individual who claims the refundable federal sales tax credits for those years. Subsection 122.5(5) also provides that, where the credit is less than $100, the credit will be paid in a lump sum rather than by instalments. No credit will be paid for amounts less than $1 or after the individual becomes a non-resident. The credit will also not be paid after the individual dies, except as provided by subsection 122.5(6). To be entitled to the credit in respect of a taxation year, the tax return for the year must be filed with the required form within 3 years after the end of that year.

Subsection 122.5(6) enables a qualified relation of a deceased individual to file an application to receive the remaining payments that would otherwise have been made to the individual.

Example 1

Calculation of GST credit for a married couple with two young children for the 1990 taxation year:

Basic credit		$190
Spousal credit		190
Two children (2 x $100)		200
		580
Net incomes of both spouses	$30,000	
less: credit threshold	24,769	
	$ 5,231	
Subtract 5% of $5,231		(262)
GST credit for the year		$318

The spouse claiming the credit will receive it in four instalments of $79.50 in July and October, 1991 and January and April, 1992.

Example 2

Calculation of GST credit for a single individual with no dependants for the 1990 taxation year:

Basic credit		$190
Supplementary credit		
Individual's net income	$20,000	
less: basic tax credit amount	6,175	
	$13,825	
Add 2% of $13,825 (max. $100)		100
Individual's net income	$20,000	
less: credit threshold	24,769	
	NIL	
Subtract 5% of NIL		NIL
GST credit for the year		$290

The individual will receive the credit in four instalments of $72.50 in July and October, 1991 and January and April, 1992.

CLAUSE 49

Paragraph 152(1)(b) Assessment

Subsection 152(1) of the Income Tax Act requires the Minister of National Revenue to assess with all due dispatch a taxpayer's return of income and to determine the amount of any refundable tax credit to which the taxpayer is entitled. Paragraph 152(1)(b) is amended to refer to the new GST credit provided under section 122.5. This amendment is applicable to the 1989 and subsequent taxation years.

CLAUSE 50

Subsection 160.1(1.1) and (2.1) Liability for refunds

Subsection 160.1(1.1) of the Income Tax Act, relating to the refund of the refundable sales tax credit, is amended as a consequence of the replacement of such credit with the GST credit. That subsection was redundant in any event as a result of recent amendments to subsection 160.1(1) made effective for the 1988 and subsequent taxation years. It is replaced with a provision similar to subsection 160.1(2.1) which makes an individual and the individual's qualified relation for the purposes of the GST credit jointly and severally liable to repay any excess GST credit previously paid to the individual. This amendment is applicable to the 1989 and subsequent taxation years.

Subsection 160.1(2.1) of the Act, which provides that an individual and the individual's spouse are jointly and severally liable to repay any excess refundable sales tax credit, is repealed as a consequence of the repeal of the refundable sales tax credit provisions. This amendment is applicable to the 1991 and subsequent taxation years.

CLAUSE 51

Paragraph 163(2)(c) False statements or omissions

Any taxpayer who, knowingly or under circumstances amounting to gross negligence, makes a false statement or omission in a return is liable to a penalty under subsection 163(2) of the Income Tax Act of 50 per cent of the amount of additional tax that is attributable to the omission or false statement. Paragraph 163(2)(c), which allows the 50 per cent penalty to be imposed where a false statement or an omission is made in respect of the refundable federal sales tax credit, is repealed as a result of the repeal of that credit and its replacement with the new GST credit. This amendment is applicable to the 1991 and subsequent taxation years.

Paragraph 163(2)(c.1) Penalty

The addition of new paragraph 163(2)(c.1) of the Income Tax Act is strictly consequential on the introduction of the GST credit. The new paragraph imposes a 50 per cent penalty where a false statement or an omission is made in respect of that new credit. This amendment is applicable to the 1989 and subsequent taxation years.

CLAUSE 52

Subsection 164(2.1) Refunds

Subsection 164(2) of the Income Tax Act provides that, where a taxpayer is liable or about to become liable for other income tax payments, the Minister may apply the amount of overpayment to the other tax liability rather than make a refund. In such a case, the taxpayer is notified of that action. New subsection 164(2.1) provides that, where the GST credit otherwise payable in respect of a given month specified for that purpose is used in whole or in part to reduce a tax liability, the amount so used is generally treated as having been paid by the individual on the last day of the given month. However, with respect to the credit for July of each year, the amount is treated as having been paid on the day that is the earlier of the following October 31 and the date of the offset, but in any event not earlier than the end of July. In addition, where the return of income for the year or the relevant form is not filed by the due date for the return, the portion of the GST credit that is used to offset the tax liability is treated as having been paid by the individual no earlier than the time of the offset.

This amendment is applicable to the 1989 and subsequent taxation years.

Subsection 164(3)

Subsection 164(3) of the Income Tax Act provides for the payment of interest on tax refunds. This subsection is amended as a result of the introduction of the GST credit to specify that no interest is payable to a taxpayer on that portion of the taxpayer's tax refund that represents a payment of this particular credit.

This amendment is applicable to the 1989 and subsequent taxation years.

CLAUSE 53

Subsection 248(1) Definition

Subsection 248(1) of the Income Tax Act provides definitions of certain words and expressions used throughout the statute. Subsection 248(1) is amended to add the definition "goods and services tax". The definition refers to Part IX of the Excise Tax Act under which the GST is imposed. The amendment is applicable after 1990.

Subsection 248(15) Change of use

New subsection 248(15) of the Income Tax Act provides that, where a taxpayer incurs a liability for the GST in respect of the change of use at a particular time of a property, the liability so incurred is deemed to have been incurred immediately after the particular time in respect of the acquisition of the property. This amendment ensures that the GST liability arising as a consequence of a change of use is included in the cost or capital cost of the property for income tax purposes.

This amendment is applicable after 1990.

Subsections 248(16), (17) and (18) Input tax credit and rebate

New subsection 248(16) of the Income Tax Act is a special rule under which amounts received by, or credited to, a taxpayer as an input tax credit or rebate with respect to the GST are deemed to be assistance from a government received by a taxpayer. As a consequence, such amounts are either included in income or reduce the cost or capital cost of the related property or the amount of the related expenditure or expenditure pool for tax purposes (as specifically provided under subsection 12(2.2) or 13(7.1), paragraphs 37(1)(d) and 53(2)(k) and subparagraphs 66.1(6)(b)(ix), 66.2(5)(b)(xi) and 66.4(5)(b)(viii)).

Subsection 248(16) also specifies the time at which such amount is deemed to be received as assistance. Except in the case described in new subsection 248(17), where such amount is claimed by the taxpayer as an input tax credit in a return under section 238 of the Excise Tax Act for a reporting period, it is deemed to have been received at the time the related GST was paid or payable in the reporting period (unless such tax was not paid or payable in that reporting period, in which case the assistance is deemed to have been received at the end of the reporting period). In the case of a rebate with respect to the GST, the assistance is deemed to have been received at the time the rebate is received or credited.

Subsection 248(17) applies in the case of an input tax credit in respect of a passenger vehicle or aircraft claimable by an individual or partnership where the credit is determined by reference to the capital cost allowance deducted in respect of the vehicle or aircraft (i.e., where there is less than exclusive use in commercial activity). This subsection defers the time the input tax credit is considered to be received for income tax purposes to the taxation year or fiscal period following that in which the GST in respect of the property was considered as payable for purposes of determining the input tax credit. This avoids a circularity under subsection 248(16). The provision preserves the proper timing between the input tax credit entitlement and the adjustment to the capital cost.

Subsection 248(18) provides that an amount added in determining net tax of a taxpayer under Part IX of the Excise Tax Act in respect of an input tax credit previously deducted in computing such net tax is treated as assistance that is repaid. Such an amount could be so added pursuant to an assessment of the GST under the Excise Tax Act. As a consequence of new subsection 248(18), such an amount will either be deducted in computing income under paragraph 20(1)(hh) or will increase the cost or capital cost of the related property or the amount of the related expenditure or expenditure pool for tax purposes (as specifically provided under subsection 13(7.1), paragraphs 37(1)(c) and 53(2)(k) and subparagraphs 66.1(6)(b)(iv.1), 66.2(5)(b)(iii.1) and 66.4(5)(b)(iii.1)).

These amendments are applicable after 1990.

Part VI: Statistics Act

CLAUSE 54

Paragraph 24(a) Returns under Excise Tax Act

This amendment permits the Chief Statistician to have access to returns and other records obtained by the Minister of National Revenue for purposes of Part IX of the Excise Tax Act.

Part VII: Tax Court of Canada Act

CLAUSES 55 to 62

These clauses make consequential amendments to the Tax Court of Canada Act

CLAUSE 55

Section 2.2 Interpretation

In this new section, two terms are defined. "Aggregate of supplies for the prior fiscal year" means all supplies, whether taxable, zero-rated or exempt, made within the last completed fiscal year that ended at least 6 months prior to the day on which the notice of appeal was filed.

"Amount in dispute" in an appeal means the sum of

(a) all tax, net tax and rebate in issue,

(b) any interest or penalty in issue and

(c) any amount of tax, net tax or rebate that is likely to be affected by the appeal that is the subject of any other appeal, assessment or proposed assessment of the person who brought the appeal.

The following are two examples of situations covered by paragraph (c) above. First, assume Company X and the Minister have a dispute as to the proper allocation of input tax credits between exempt and taxable activities. The Minister has assessed three periods and the company has appealed all three assessments to the Court. In all three periods the legal issues are the same or closely related and the factual issues are similar. In determining the "amount in dispute" for the first period one would include not only the net tax, interest and penalties (under paragraphs (a) and (b) above) but one would also include the amounts in dispute in the second and third periods under paragraph (c). Thus, whether the three appeals were heard together or the first was heard with the parties agreeing to settle the other two appeals on the basis of the judgment in the first, the "amount in dispute" would be the same. Secondly, assume the Minister and Company X had a dispute over whether or not the sale of a particular good is zero-rated. The Minister has assessed periods 1 to 4 on the basis that the good is taxable; the Minister has also written to the taxpayer to say that he proposes to assess periods 5 to 8 on the same basis. The taxpayer has appealed period 1 to the Court and has filed objections for periods 2 to 8 in additional to the amounts in dispute in period 2 under paragraphs (a) and (b).

CLAUSE 56

Subsection 4(1) Constitution of Court

This change will increase the size of the Tax Court by 4 judges.

CLAUSE 57

Subsections 12(1), (3) and (4) Jurisdiction

This provision expands the jurisdiction of the Tax Court of Canada to include appeals, determinations and time extension applications under the GST.

CLAUSE 58

Subsection 18.18(2) Periods excluded

Under this provision the following periods will be excluded for the purpose of computing the time for filing a reply or fixing a day for hearing:

- From 21 December to 7 January of the following year
- Any period during which proceedings are stayed in accordance with section 327(4) of the Excise Tax Act.

CLAUSE 59

Paragraph 18.27(c) Regulations

This provision will add flexibility by allowing the Governor in Council to make regulations raising the $7,000 amount in paragraphs 18.3002(3)(a), 18.3008(a) and 18.3009(1)(a) relating to informal appeals of GST issues to the Tax Court to any amount not exceeding $12,000.

CLAUSE 60

Subsection 18.29(3) Extension of time

This clause amends subsection 18.29(3) of the Tax Court of Canada Act so that the sections of the informal procedure which apply to time extension applications under the Income Tax Act also apply to time extension applications under GST.

CLAUSE 61

Sections 18.3001 to 18.301 Informal procedure for GST appeals

This clause amends the Tax Court of Canada Act to provide an informal procedure for GST appeals. Where "(new)" is shown after a reference, the section is added by virtue of this section. Where "(old)" is shown after a reference, the section is already in the Tax Court of Canada Act and is made applicable by section 18.301, which is also added by this clause.

Where an appellant does not elect the informal procedure, the appeal will be governed by the general procedure (sections 17.1, 17.2 and 17.4

to 17.8) except for section 17.3 which will not apply to GST appeals. Where the appellant chooses the general procedure, or the appeal is transferred to the general procedure at the request of the Attorney-General pursuant to section 18.3002, the Minister must file a reply in accordance with the time limits set out in the rules unless the appellant consents to the filing of a reply at a later date.

Generally the informal GST procedure is similar to the informal income tax procedure created by the legislation of September 1988 which is not yet in force (S.C. 1988, c. 61). However, two differences warrant special note. First, if the Minister agrees there is no quantum jurisdictional limit to the informal procedure, a taxpayer may choose to bring any appeal to the informal procedure but the Court shall, at the request of the Attorney-General of Canada, transfer the appeal to the general procedure. Secondly, the time limits are longer than for income tax.

An appellant may choose the informal procedure in the appellant's notice of appeal or at such later time as may be provided in the rules of the Court. Section 18.3001 (new).

Any party to an appeal may be represented in person, by agent (who is not a lawyer) or by counsel. Section 18.14 (old).

An appeal under the informal procedure must be in writing and must set out the reasons for the appeal and the relevant facts but no special form of pleadings is required. An appeal may be brought in the form set out in the rules. The appeal shall be instituted by filing in, or mailing to an office of the registry of the Court the original of the written appeal. Section 18.15 (old).

The Court is not bound by any legal or technical rules of evidence in conducting the hearing of an informal appeal. The Court shall deal with the appeal as expeditiously and informally as the circumstances and considerations of fairness permit. This section gives the Court some flexibility in dealing with informal matters; in appropriate circumstances it is particularly useful where appellants do not retain a lawyer and act on their own behalf. The Court may follow legal rules of evidence. Because the law of evidence has been carefully developed over time to ensure fairness and to ensure that evidence is reliable, the Court is frequently likely to follow the law of evidence; the application of that law is likely to be more flexible however. Subsection 18.15(4) (old).

The Attorney-General of Canada can have any appeal transferred to the general procedure. A request to move the case must be made within 60 days of the day on which the Court transmits the Notice of Appeal to the Minister of National Revenue unless the appellant consents to a later application or the Court is satisfied

(a) that the Attorney-General became aware, after the 60 days elapsed, of information that justifies making the request after the 60 day period or

(b) that the request is otherwise reasonable in the circumstances. Subsections 18.3002(1) and (2) (new).

Where on the request of the Attorney-General a case is transferred from the informal procedure to the general procedure, the "amount in dispute" (see section 53) is equal to or less than $7,000 and the "aggregate of supplies for the prior fiscal year" (see section 53) of the appellant is equal to or less than $1 million, the Crown will bear "all reasonable and proper costs" of the person. The term "all reasonable and proper costs" is used in subsection 178(2) of the Income Tax Act as that subsection currently reads (prior to the proclamation of section 21 of c.61, S.C. 1988); it is expected that the term will be interpreted in the same way as it has been in subsection 178(2). Subsection 18.3002(3) (new).

A case meeting the $7,000 and $1 million test just described will be referred to below as a "claim $7,000 or less".

The Minister must file a reply to a notice of appeal within 60 days after the day on which the Registry of the Court transmits the appeal to him unless the appellant consents to the Minister filing later or the Court, on application, allows the Minister to file later. Subsection 18.3003(1) (new).

Where the Minister does not file a reply within the 60 days, the Court does not allow the Minister to file after the 60 days and the appellant does not consent to the late filing, the Minister may still file a reply but the allegations of fact contained in the Notice of Appeal will be presumed to be true; the presumption is rebuttable however. Subsection 18.3003(2) (new).

Other than in exceptional circumstances, the Court must fix a date for hearing of the informal appeal within 180 days of the last day on which the Minister must file a reply. Section 18.3005 (new). The Court may grant a request to have the appeal heard after the 180 days where the parties consent or where it would be appropriate to await the outcome of another case. Subsection 18.17(2) (old).

The Registrar shall send the parties a Notice of Hearing by registered mail no later than 30 days before the date of hearing unless the parties waive notice. The Court shall adjourn a hearing if it would be impractical to proceed on the date fixed and may adjourn the matter where the parties consent or where it would be appropriate to await the outcome of another case. Sections 18.19 and 18.2.

Where the appellant fails to appear on the date of hearing the Court shall, on application of the respondent, dismiss the appeal unless the Court is satisfied that the circumstances justify setting the appeal at a later date. Subsection 18.21(1) (old).

Where an appeal has been dismissed because the appellant failed to appear, the appellant may apply to have the order of dismissal set aside if it would have been unreasonable to expect the appellant to have attended the hearing, the appellant applies as soon as possible in the circumstances and the application is made within 180 days of the day on which the order was mailed to him. This provision gives the Court some flexibility to deal with exceptional circumstances. For example, if the appellant was involved in a car crash on the way to the hearing and was hospitalized for several days the Court would be able to set aside the order. Subsections 18.21(2) and (3) (old).

Other than in exceptional circumstances, the Court shall render judgement within 90 days after the hearing is concluded. The Registrar shall send a copy of the judgment and any written reasons to each party. Section 18.3006 (new) and subsections 18.22(2) and (3) (old).

The Court must give reasons for its judgment but the reasons need not be in writing. Section 18.23 (old).

A judgment of the Court is final and cannot be appealed or reviewed other than in accordance with section 28 of the Federal Court Act which provides for judicial review by the Federal Court of Appeal. Section 18.24 (old).

The decision of the Court is non-precedential. Section 18.28 (old).

No costs are awarded in the informal procedure unless the following conditions are met: the appeal is allowed, the appellant is successful to the extent of at least one-half, measured quantitatively, and the appeal is a "claim of $7,000 or less". In any other case, no costs may be awarded. (Subsection 18.3009(1) (new)).

In deciding whether to award costs in accordance with the rules, the Court may consider any written settlement offer made at any time after the notice of appeal was filed. Subsection 18.3009(2) (new).

If the Minister applies for judicial review and the appeal is a "claim of $7,000 or less" the Crown must bear the reasonable and proper costs of the person who brought the appeal. Section 18.3008 (new).

Section 18.3007 applies to certain appeals where the appellant chooses the informal procedure but, at the request of the Attorney-General, the case was transferred to the general procedure. In addition, for the section to apply the appeal must not be a "claim of $7,000 or less", the "amount in dispute" must be equal to or less than $50,000 (see section 53) and the "aggregate of supplies for the prior fiscal year" (see section 53) must be equal to or less that $6 million. (A case which is not a "claim of $7,000 or less" but which meets the $50,000 and $6 million test just described will be referred to as an "intermediate claim" below.) If these conditions are met and the Court is satisfied that the circumstances warrant such a decision then the Court may

(a) make no order as to costs or award costs to the appellant in circumstances where, under the rules, costs would have be awarded to the Crown or

(b) award costs to the appellant in circumstances where, under the rules, no order as to costs would be made.

If the Court is not satisfied that such an order should be made then the ordinary cost rules would apply. Under the ordinary rules, costs are usually awarded to whichever party is most successful and, where success is more or less evenly divided, the Court will usually make no order as to costs. Other factors may sometimes produce a different order.

If an order is made under section 18.3007, the quantum of costs would be in accordance with the rules (party-party); this is a lower scale of costs than under subsection 18.3002(3) and section 18.3008 where the scale is "reasonable and proper costs" (solicitor-client).

The result of subsection 18.3002(3) and section 18.3007 is that there are three categories of appeals for the purpose of costs where the taxpayer elected the informal procedure but the Minister had the case moved to the general procedure:

(1) "claims of $7,000 or less",

(2) "intermediate claims" and

(3) large claims.

In the case of a "claim of $7,000 or less" a decision by the Minister to move the appeal to the general procedure is likely to be the result of the case having some importance beyond the actual amount at issue. In such a case the Minister's choice imposes significant additional costs upon an appellant who is a small taxpayer (which is measured by the $1 million supplies test). In such cases it is appropriate for society to bear the reasonable and proper costs of the appellant.

In the case of a large claim, the burden on the appellant moving a claim into the general procedure is much less because the amount at issue is significant or the appellant is a large taxpayer. As a result, whoever is most successful will usually be awarded costs in accordance with the rules and, when success is more or less evenly divided, costs will usually not be awarded. (The word "usually" is used because the law of costs allows the Court to take into account a variety of other factors which may result is orders different from the normal case). Given that the costs of a matter in the general procedure are often significant, it is appropriate that society should reimburse part of the costs incurred by a successful appellant; conversely, it is appropriate that an unsuccessful appellant reimburse part of the costs incurred by society.

The intermediate claim category exists to try to reconcile two conflicting objectives. On the one hand it is clear that in some cases in the intermediate category the additional costs of the general procedure may be a significant burden for a smaller taxpayer. On the other hand, the nature of many cases may be such that the informal procedure would be inappropriate for the case. Section 18.3007, in recognition of this, is designed to give greater flexibility to the Court in cases where the appellant is unsuccessful or success is about evenly divided by permitting the award of costs to the appellant even though that would not normally be the case. Also, in recognition of the fact that these are "intermediate claims" costs are set at the level of costs under the rules rather than the higher level of costs for "claims of $7,000 or less". ("reasonable and proper costs").

Of course, where the appellant is successful, the Court would normally award costs under the general rules without any recourse to section 18.3007.

The requirements of sub-section 18.3007(1) will only be met in some cases. The Court will be able to consider a wide variety of factors in determining whether the requirements are met: whether the informal procedure would have been suitable, the complexity and importance of the case, the outcome, the conduct of the parties, the degree to which additional costs were imposed by the move to the general procedure and the impact of those extra costs on the appellant. For example, in a complex case where the appellant retained counsel to conduct the appeal in the informal procedure it might turn out that as a result of discovery there was a settlement or a withdrawal by the plaintiff. In such a case it might turn out that the costs of the appellant were not very different from those that would have occurred if there had been a trial under the informal procedure. If such were the case, it would be a factor against applying section 18.3007. Similarly, if discovery was necessary for the Crown to obtain information not provided by the appellant at any stage prior to the appeal or if discovery were necessary by the sheer complexity of the facts, this would also be a factor against the application of section 18.3007. On the other hand, if the facts of the case were straightforward, the general procedure imposed a significant additional burden on the taxpayer as opposed to the informal procedure (for example, a small company had planned to represent itself by an employee but it was obliged to retain a lawyer) and the reason that the Crown decided to use the general procedure was that the Crown desired to have a precedent setting decision in the matter, then it is likely that the Court would find that the circumstances warranted an order under paragraph 18.3007(1)(e) or (f).

Thus section 18.3007 should provide the Court with wider flexibility than the normal cost rules would provide for intermediate cases in which the Minister has had the case moved to the general procedure.

These special rules have no application where the appellant chooses to have the matter heard under the general procedure; in such cases the ordinary cost rules of the general procedure apply.

CLAUSE 62

Subsection 18.31(2) Provision to apply

This provision makes sections 17.1, 17.2 and 17.4 to 17.8 of the Tax Court Act applicable to the determination of a question under section 310 of the Excise Tax Act. As a result, the general procedure will apply to these determinations except for section 17.3.

CLAUSES 63 and 64

Subsections 18.32(2) and 18.33(2) General procedure

These subsections provide that the general procedure, except for section 17.3 of the Tax Court of Canada Act, will apply to the determination of questions common to two or more persons under section 311 of the Excise Tax Act. However, if all parties to the application agree, the matter may be heard under the informal procedure.

CLAUSE 65

Under this clause, Part VIII or any provision thereof shall come into force on a day or days to be fixed by order of the Governor in Council.

Schedule

Clause 18 in Bill C-62 provides for the addition of three schedules to the Excise Tax Act. Those schedules are printed in the schedule to Bill C-62.

The three schedules to be added to the Excise Tax Act are as follows:

- Schedule V, which provides a list of supplies to be exempt from GST (Exempt supplies are not subject to GST. However, persons making exempt supplies are not able to claim input tax credits to recover GST paid on purchases to the extent such purchases are for use in making those supplies.);
- Schedule VI, which lists supplies that are zero-rated under the GST (Zero-rated supplies are not subject to GST. Unlike exempt supplies, however, GST registrants who make zero-rated supplies are able to claim input tax credits for any GST paid on purchases relating to the making of zero-rated supplies); and
- Schedule VII, which specifies those items that, upon importation into Canada, are not subject to the GST imposed under Division III of Part IX of the Excise Tax Act.

The following pages explain in greater detail the provisions contained in each of these schedules.

SCHEDULE V

Exempt Supplies

This Schedule contains eight Parts listing supplies of property and services that are exempt from GST. These include:

Part I	Real Property
Part II	Health Care Services
Part III	Educational Services
Part IV	Child and Personal Care Services
Part V	Legal Aid Services
Part VI	Public Sector Bodies
Part VII	Financial Services
Part VIII	Ferry, Road and Bridge Tolls

Part I

Real Property

As a general rule, supplies of real property, including new housing, are subject to GST. Subject to the provisions contained in sections 254 to 256 of the Act which rebate a portion of the GST paid by new home buyers, the GST paid on new homes is generally non-recoverable to purchasers. With the rebate, the GST on new homes less than $350,000 is effectively equal to 4.5 per cent of the purchase price -- roughly the same amount of tax as under the existing federal sales tax. In the context of the GST, resale housing is exempt from tax -- this, on the premise that tax has previously been paid and not recovered.

This Part lists real property transactions that are exempt from GST. The principal exemptions are for used residential housing in section 2, and residential rents in section 6.

A number of important terms used throughout this Part are defined in subsection 123(1) of the Act. The principal ones include "residential complex", "multiple unit residential complex", "residential condominium unit", "substantial renovation", and "builder".

Section 1 Definition of "improvement"

Under sections 2 to 5, the supply of a residential complex is not exempt if an input tax credit has been claimed on any improvements made to the complex. This section defines improvement to have the same meaning as in the Income Tax Act. Specifically, an improvement constitutes any goods or services used in improving a residential complex to the extent that the expenditure thereon would be included in the adjusted cost base of the complex. Hence, a second new storey added to a house would constitute an improvement.

Section 2 Sales of residential complexes other than by the builder

This is the principal exempting provision for used housing. Under this section, the sale of a used residential complex is exempt unless the vendor has otherwise recovered the GST previously paid as an input tax credit. "Residential complex" is defined in subsection 123(1) of the Act. It includes attached, detached and semi-detached homes, as well as residential condominium units, apartment buildings and mobile homes.

Specifically, this section exempts the sale of a residential complex or a new addition to a multiple unit residential complex or an interest therein by a person who is not the builder, unless the person has claimed an input tax credit in respect of the acquisition of or an improvement to the complex (i.e., if the person used the complex in commercial activities).

It should be noted that, even if a person has claimed an input tax credit on a residential complex, the resale is still exempt as long as the person had ceased to use the complex in commercial activities and has, under subsections 206(4) or 207(1) or section 210 of the Act, paid GST on the complex at the time the use of the complex changed.

Section 3 to 5 Self-supplied complexes

These sections provide that where a builder has previously paid tax in respect of a residential complex (for instance, under the self-supply rules in section 191), then a subsequent sale of the complex by the builder is exempt.

Section 3 exempts the sale of a self-built home by an individual who has used the dwelling primarily as a residence. Given that tax will have been paid on the inputs, no tax is charged on a subsequent sale.

Sections 4 and 5 address the situation where a builder of a single unit residential complex, a condominium unit, a multiple unit residential complex or an addition to a multiple unit residential complex is taxed under the self-supply rules in section 191, and subsequently sells the property. In these cases, provided an input tax credit has not been claimed by the builder in respect of the property, the subsequent sale is tax exempt.

Section 6 Long-term residential rents

This section exempts long-term residential rents and certain short-term accommodation in rooming or boarding houses.

Long-term rentals include periods in excess of one month. To qualify for exemption under this section, the long-term rent must be for a residential unit (such as an apartment) or a residential complex (such as a house). Excluded from these categories are buildings such as hotels, motels, etc. where all or substantially all of the units therein are rented out for periods of less than sixty days. As a result, long-term rentals of hotel and motel rooms generally are subject to GST.

Paragraph (b) exempts short-term stays in, for example, rooming and boarding houses, if the rental charge is not more than $20 per day or $140 per week.

Section 6.1 Residential Leases

This section exempts leases of land or buildings to a person who, in turn, leases the property on an exempt basis. For example, the lease of property to a nursing home that, in turn, supplies long-term residential rents to residents of the home, is exempt under this provision.

Section 7 Long-term rentals of land

This section exempts the lease or rental of land for a period of one month or longer to the owner or lessee of a mobile home or any other residential unit situated on the land to use as a place of residence. Under this provision, for example, pad rentals in a mobile home park are exempt as is a long-term ground lease on which a residence is situated.

It should be noted that the exemption in this section does not extend to campgrounds or the rental of space for motor homes and trailers since these do not qualify as residential units or mobile homes.

Section 8 Supply of a parking space

Parking space charges are exempted under this section if the parking is incidental to the supply of an exempt residential complex or residential unit in a residential complex, or any other exempt supply described in sections 2 to 7 of this Part. Consequently, where a residential landlord charges a separate amount to a tenant for a parking space, that charge is exempt under this provision.

Section 9 Sales by individuals

The sale of real property by an individual or trust (all the beneficiaries of which are individuals) is exempt under this section, except in the following cases:

- a sale of real property which was used primarily in the course of a business;
- real property which is sold in the course of a business;
- real property which is sold in the course of an adventure or concern in the nature of trade that is not a business where an election has been made for the sale to be taxable; or,
- where an individual is treated as having made a sale of property under the change of use rules in either section 206 or 207 and incurs a GST liability.

This provision exempts, for example, individuals selling country properties kept for their personal use, non-commercial hobby farms and other non-business land.

The sale of a residential complex is excluded from the exemption provided under this section as these are exempted under other provisions in this Part -- notably sections 2 through 5.

Sections 10, 11 and 12 Supply of farmland

Where a farmer sells or transfers farmland to an individual related to the farmer (or a former spouse of the farmer) who, in turn uses the land for the individual's own personal use and enjoyment, the supply is exempted under these sections. As a consequence, no tax applies where, for example, a farmer turns over a piece of farmland to a son or daughter to build a house. Also, no tax applies where a farmer commences to use farmland for his/her own personal use and enjoyment.

These exemptions do not apply to all sales of farmland by a farmer: the sale of farmland to a developer or to an unrelated individual is taxable in all circumstances.

Section 13 Condominium fees

This section exempts condominium fees charged to residential condominium owners or lessees. As a consequence, residential condominium corporations are treated much the same as residential landlords: they are not permitted to claim input tax credits for GST paid on purchases related to any property or services provided to condominium owners.

Section 14 Application of self-supply rule

The self-supply rules in section 191 are considered to have been in force at all times before 1991 for the purposes of determining whether a sale of a residential complex constitutes an exempt sale of a "used" premises under section 4 or 5 of this Part. Thus, for example, if a builder constructs an apartment tower and leases it to tenants in 1990, then sells it in 1991, the rule in section 191 would treat the builder as having self-supplied the tower in 1990 (of course there would not be any GST payable on the self-supply as it occurred before January 1, 1991). The sale in 1991 would therefore be exempt.

Part II

Health Care Services

This Part sets out the health care services that are exempt under the GST.

Section 1 Definitions

In this section are definitions of key terms referred to in this Part.

"health care facility" This term refers to an acute, rehabilitative, or chronic care hospital, clinic or similar facility. It also includes an institution for the mentally disordered, a nursing home or an institution providing similar services for children. The definition encompasses facilities which are operated by a government, a non-profit organization or charity, or on a private-for-profit basis.

"institutional health care service" This term is relevant to section 2 below. It defines the range of health care services that are exempt when provided in a health care facility. The definition includes basic health care services provided by health care facilities to their patients or residents. Of particular note, it includes the provision of accommodation (including standard ward, semi-private or private), as well as meals provided with accommodation, and rentals of medical equipment, such as a dialysis machine, to patients or residents of the facility. Other services provided by these institutions, such as parking and meals served in a cafeteria to visitors, or haircuts for which a separate fee is charged, do not fall under the definition of institutional health care services.

"practitioner" This definition sets out the conditions under which persons are not required to charge GST on their supplies of services itemized in section 7 of this Part. To qualify as a practitioner providing an exempt service, the person must be licensed or otherwise certified to practice the particular profession in the province where the services are rendered or, in the event that the province has no such certification requirements, the person must possess qualifications equivalent to those required in another province. In the case of psychological services, the person must also be registered.

Section 2 Institutional health care services

This section exempts institutional health care services (as defined above), when provided to a patient or resident of a health care facility. However, the exemption does not cover a cosmetic surgical or dental service that has no medical or reconstructive purpose. In this regard, cosmetic surgery provided, for example, to a burn victim or cancer patient, would be considered to have a medical or reconstructive purpose and would, therefore, be exempt.

Section 3 Medical equipment leases

This section exempts leases of medical equipment by a health care facility such as a hospital where the lease is on the order of a medical practitioner.

Section 4 Ambulance services

This section exempts ambulance services (including air ambulance services) where they are provided by a person carrying on such a business.

Section 5 Physicians' and dentists' services

This section exempts medical or dental services provided by licensed physicians or dentists, but does not cover services which are performed for cosmetic purposes and not for medical or reconstructive purposes. On this basis, for example, an orthodontic service performed both for cosmetic and dental purposes would be exempt.

Section 6 Nursing services

This section provides an exemption for nursing services rendered by a registered nurse, a registered nursing assistant or a licensed practical nurse. The services are exempt if provided to an individual in a health care facility or in the individual's home. Also exempted are private-duty nursing services provided to an individual. It should also be noted that nursing services supplied to public sector bodies are exempt under this provision. As a result, services provided to a school, nursing home, or community clinic, for example, are not subject to GST.

Section 7 Health care practitioners' services

Under this section, health care services rendered by persons qualifying as "practitioners" within the meaning assigned by section 1 of this Part are exempt. These services are either funded, in whole or in part, by health insurance plans in two or more provinces or are generally provided in hospitals.

Section 8 Dental hygienists' services

Dental hygienists' services are typically supplied as part of the exempt dental services provided by dentists. Under this section, if a dental hygienist enters into a contract with a group of dentists or provides dental hygiene services to a school, those services are exempt as well.

Section 9 Other provincially insured services

This section provides that any other health care service which is insured by a province under its provincial medicare plan is exempt to the extent that the amount charged for the service is paid or reimbursed by the provincial plan.

Section 10 Prescribed service

This section exempts prescribed health care services when made on the order of a "medical practitioner" or "practitioner", as defined, e.g., a laboratory testing service.

Section 11 Food services supplied to hospitals, nursing homes etc

This section exempts food services provided to a "health care facility", as defined in section 1 of this Part where the service is provided under a contract to provide meals on a regular basis to the patients or residents of the facility. However, food and beverages sold in a cafeteria or canteen of a health care facility to visitors are taxable.

Section 12 Psychoanalytic services

Under this section, a supply of a psychoanalytic service is exempt if the supplier has received the same training in the provision of such services as do medical doctors and is a member in good standing of a professional society that sets and maintains standards of practice for all members in respect of psychoanalytic services in Canada. The members of the society must consist of at least 300 Canadian members, two-thirds of which must be medical practitioners.

Part III

Educational Services

This part sets out the exemptions for educational services under the GST.

Section 1 Definitions

This section contains definitions of key terms used in this Part.

"provincial regulatory body" This term refers to bodies which are constituted or empowered by provincial legislation to regulate a profession or trade in the province by setting standards of knowledge and proficiency, as well as registering or licensing individuals practising the trade or profession. This would include, for example, a provincial college of physicians or dentists, a provincial institute of chartered accountants, or a provincial association of professional engineers.

"vocational school" This term refers to an organization established and operated primarily to provide courses which develop or enhance students' occupational skills. It also includes any educational institution certified by the Minister of Employment and Immigration for the purposes of the tuition fee credit provision under the Income Tax Act. This definition is important for purposes of the exemptions contained in sections 6 and 8 of this Part.

Section 2 Elementary and secondary schools

This section exempts fees for courses provided primarily for elementary and secondary school students by a school authority, as defined in subsection 123(1). As a result, tuition fees paid to private schools, operating either on a non-profit or for-profit basis, are exempt as long as they meet the standards of educational instruction established by the province in which they operate.

Section 3 Extra-curricular services

This section exempts charges for food, beverages or services that are supplied by the school authority primarily to elementary or secondary school students as part of an extra-curricular activity organized by the school. This would include, for example, charges by a school to students for a school-organized visit to a museum or theatre. It should be noted, however, that the exemption under this section does not extend to other sales of goods to students. For example, sales of school rings or sweaters by a school authority to students are subject to GST in the normal manner.

Section 4 Student services

This paragraph exempts services provided by a student (or instructor) to an individual in the ordinary course of instructing an elementary or secondary school student. This would include, for example, haircuts provided to individuals as part of a hair-styling class in a secondary school.

Section 5 School bus services

This section exempts charges by a school authority to elementary or secondary school students for school bus services. A contract between a school and a private business for the provision of school bus services would, however, be taxable. Any GST paid by the school on such a contract would, of course, be partly rebated under section 259 of the Act.

Section 6 Courses in respect of recognized professional or trade designations

This section exempts tuition or examination fees charged by professional or trade associations, governments, vocational schools, universities, public colleges, or provincial regulatory bodies for courses supplied for the purpose of obtaining, maintaining or upgrading a professional or trade accreditation or designation recognized by a regulatory body, such as an accounting designation. To qualify for the exemption, the course must be a requirement to obtain such a designation, to maintain the individuals' current accreditation or to achieve a higher standing or class. This section is not intended to include courses which are taken to merely broaden individuals' knowledge in a particular field and which are not strictly required to obtain, maintain or upgrade an accreditation or designation. Courses which fall within this exemption are exempt for all students, even for those who are not taking the course for purposes of obtaining, maintaining, or upgrading an accreditation or designation.

This section also provides a supplier of such courses with the option of electing to be taxable on the course fees. This would be beneficial, for example, if virtually all the students were registrants and therefore eligible for input tax credits.

Section 7 Credit course for diploma or degree

This provision exempts tuition or examination fees paid to a school authority, public college or university for courses which can be taken for credit leading to a degree or diploma. It should be noted that such credit courses are exempt even where they are taken by an individual not enroled in a degree or diploma program. Consequently, academic courses offered at night by a school, university or college are exempt, even if some of the students are not taking the courses as part of a degree or diploma program.

Section 8 Vocational courses

This section exempts tuition or examination fees paid in respect of courses leading to certificates, diplomas, licences, or similar documents which attest to the competence of the student and which are prescribed by federal or provincial regulations (such as regulations regarding vocational schools in a province). Under this section, courses provided by vocational schools leading to a commercial pilot's licence, a diploma in secretarial science, or to an electrician's licence, for example, are exempt.

Sections 9 and 10 Tutoring

These sections exempt tutoring in subject matter that follows the curriculum of an elementary or secondary school credit course, or which is a prerequisite to such a credit course. For example, music lessons following the Royal Conservatory of Music program (the higher levels of which qualify as elementary or secondary school credits) are exempt under this provision. In addition, programs which do not themselves lead to a credit, but which are prescribed in regulations as being equivalent to the early levels of a credit program, such as that offered by the Royal Conservatory, will be exempt as well.

Section 11 Second language instruction

This section exempts tuition or examination fees paid in respect of courses providing second language instruction in either French or English, when supplied by an elementary or secondary school, public college, university, or organization established primarily to teach languages.

Section 12 School cafeteria meals

This provision exempts elementary or secondary school cafeteria meals provided primarily to students. The exemption does not extend to sales through vending machines or sales of certain prescribed items, such as candies, bottled or canned carbonated beverages, potato chips and snack foods. In addition, the exemption does not include private catering services provided through a school cafeteria.

Section 13 University/college meal plans

Under this provision, meal plans at a university or public college sold to students are exempt as long as they include 10 or more meals weekly for a period of at least one month. It should be noted that this exemption does not depend on whether the student purchasing the meal plan lives on- or off-campus. Hence, university students living off-campus and purchasing meal plans, are provided the same treatment as students living in university residences.

Section 14 Food services supplied to universities, schools etc.

This section exempts catering services supplied under contract to a school authority, university or public college where the resupply of the service by the institution is an exempt supply.

Section 15 Lease of personal property

This provision provides that the lease of personal property (e.g. a musical instrument) by a school authority to a student is an exempt supply.

Section 16 Non-degree university and college courses

This section exempts courses, including non-degree courses, offered by a university or public college where the courses are part of a program that consists of two or more courses and that is subject to the review and approval of the institution. This exemption encompasses many non-degree occupationally-related programs provided through universities and colleges including industry-specific programs provided for professional associations which may or may not be regulated provincially. The exemption does not apply to courses in sports, games, hobbies or other recreational pursuits designed to be taken primarily for recreational purposes.

Part IV

Child and Personal Care Services

Section 1 Daycare services

This section exempts daycare services provided primarily to children 14 years of age and under. This exemption covers day camps and other daycare services for children which are eligible for the child care expense deduction under the Income Tax Act.

Section 2 Personal care services

This section exempts personal care services provided in an institution established for that purpose and the provision of a residence for children or disabled or underprivileged persons. Accordingly, payments made by agencies, such as the Children's Aid Society, to both non-profit and for-profit organizations to operate group homes for children and others needing assistance are exempt.

Part V

Legal Aid Services

This Part exempts the supply of legal aid services by the administrator of a provincial legal aid plan to legal aid recipients.

It should be noted that private lawyers are required to charge GST on any legal services they provide to the administrator of a provincial legal aid plan. However, under section 258 of the Act, the administrator of the plan is entitled to a full rebate of the tax in respect of those services.

Part VI

Public Sector Bodies

This Part sets out exemptions for supplies made by public sector bodies. The term "public sector bodies" refers to the federal and provincial governments (and their agents), municipalities, charities, non-profit organizations, school authorities, hospital authorities, universities and public colleges, each of which is defined in section 123 of the Act.

With the exception of small traders (i.e., suppliers whose annual revenue from taxable supplies does not exceed $30,000), public sector bodies are required to register and collect tax on supplies made in the course of their commercial activities. It is important to note that "commercial activity" is broadly defined in section 123 of the Act to include activities undertaken on a not-for-profit basis. For greater certainty, section 146 of the Act lists a number of specific supplies by governments and municipalities that are considered to be made in the course of a commercial activity. Supplies that are made by public sector bodies and that do not fall within the exemptions set out in this Part, or any other Part of Schedule V, generally are treated as taxable supplies.

Section 1 Definitions

This section contains definitions of terms used in this Part.

"direct cost" Section 6 of this Part provides an exemption for certain supplies made for nominal consideration - that is, consideration that does not exceed the direct cost of the supplies. In the case of goods produced by the public sector body, the direct cost is essentially the direct material cost of the goods. In the case of property or services purchased by a public sector body for resale, the direct cost is defined as the purchase price paid by the public sector body. The direct cost of a service that is performed by a public sector body's own members or employees includes only the cost of materials expended in the process of performing the service.

The nominal consideration exemption also applies to admissions to film, slide show or similar presentations. The direct cost of the presentation includes only the rental cost of film and equipment used for the presentation.

For purposes of determining direct cost, the consideration for supplies made to a public sector body includes the applicable GST, net of any input tax credits or rebates which the organization may be entitled to claim.

"homemaker service" This defines the services which are exempted under section 16 of this Part when provided on a subsidized basis to individuals.

"municipal transit service" Under Section 24 of this Part, municipal transit services are exempt. A public passenger transportation service is considered to be a municipal transit service if it is supplied by a transit authority (defined below) and at least 90 per cent of those services are within a particular municipality and its surrounding areas. Specifically excluded from the definition of municipal transit service are charter services and sightseeing tours provided by a transit authority.

"transit authority" Municipal transit services provided by a transit authority are exempt from GST. For purposes of this exemption, transit authority includes a division of a government, municipality or school authority that is established to provide such services. It also includes non-profit organizations in receipt of subsidies from governments to provide municipal transit services, as well as non-profit organizations (whether or not subsidized), if they are established and operated to provide transportation services to disabled individuals.

Section 2 General exemption for charities

Under this section, all supplies of goods and services by charities are exempt from GST, except for the list of supplies set out in paragraphs (a) to (m). The supplies included in this list are of a type generally made by commercial businesses.

It is important to note that any particular supply excluded from the general exemption for charities may still be exempt under one of the overriding exemptions provided in other sections of this Schedule. Two particularly noteworthy overriding exemptions are provided in sections 3 and 6 of this Part which deal, respectively, with volunteer activities and supplies made for nominal consideration.

The following are excluded from the general exemption for charities:

(a) a zero-rated supply For example, the sale of prescription drugs or medical devices is zero-rated, except where the supply is made free-of-charge or for nominal consideration. Consequently, if a hospital sells prescription drugs out of a pharmacy, no GST applies and the hospital is able to claim full input tax credits on purchases for use in operating the pharmacy. However, if a charity supplies a medical device, such as a wheelchair, free-of-charge or for nominal consideration, the supply is treated as exempt. In this case, the charity would not be able to claim input tax credits for purchases for use in making the exempt supply. Of course, since wheelchairs are sold tax-free throughout the production-distribution chain, the charity will not have paid tax on the original acquisition of the devices;

(b) deemed supplies (that is, any supply considered to have been made by the charity). An example would be where a charity appropriates, for the benefit of an employee, goods for which it has claimed an input tax credit;

(c) & (d) property used in a commercial activity Given that the charity is entitled to claim input tax credits in respect of non-capital property acquired for use in a commercial activity, or capital property primarily used in a commercial activity, the resupply of such properties by the charity is subject to tax;

(e) new goods acquired or produced for resale purposes (other than catered meals or donated goods);

(f) short-term rentals of personal property with real property This applies where the property is supplied in conjunction with the short-term rental of commercial real property (e.g., the rental of a photo lab and processing equipment);

(g) catering services This applies only to catering for private functions or events (e.g., weddings). Catered meals sold by a hospital to a nursing home or an organization such as Meals-On-Wheels are exempt;

(h) admissions to a place of amusement (defined in section 123 of the Act) including museums, recreational complexes, theatres, and bingo halls and casinos are taxable. Also taxable are memberships in recreational clubs and other organizations that provide otherwise taxable admissions to members for no extra charge or for significant discounts;

(i) the professional services of performing artists These services are taxable when provided under a contract with another organization which is staging a professional performance (e.g., a symphony orchestra supplies its services to an opera company). In effect, this is a relieving measure as it allows the supplier to claim input tax credits in respect of the supply, recognizing that the purchaser (e.g. the opera company) can claim input credits on the purchase as well;

(j) instruction in a recreational or athletic activity (such as adult exercise classes);

(k) sales of lottery, raffle and break-open tickets (a special exemption for these is provided under section 5.1);

(l) instructional services supplied by educational institutions (Specific exemptions for educational services are contained in Part III of this Schedule); and

(m) admissions to university or college seminars, conferences or similar events.

Section 3 Volunteer exemption for charities

Where a charity supplies property or services in the course of a business, or an activity that is not part of an on-going business, those supplies are exempt under this section if, overall, the day-to-day administrative and other functions involved in carrying on the business or activity are performed substantially (meaning 90 percent or more) by volunteers. It should be noted that for the purpose of this test, periodic meetings of a board of directors or similar body responsible for overseeing the affairs of the business or activity are not considered to be part of the "day-to-day" functions.

Paragraph (c) addresses the situation where a charity operates a business that does not meet the volunteer test overall but, in the course of that business, the charity establishes a special volunteer-run program. For example, a community centre may be operated primarily by paid support staff and instructors, but still offer a special program (e.g., a series of exercise classes for senior citizens) where the instructors are all volunteers. While the community centre as a whole would not qualify as being volunteer-run under paragraph (a), the senior's program would fall under the exemption in paragraph (c). Therefore, charges for admission to the program would be exempt.

The volunteer exemption does not apply in the case of:

- zero-rated supplies;
- supplies considered to have been made by the charity as a result of the change of use of property;
- supplies of property used in a commercial activity of the charity;
- gambling activities (a special exemption is provided under sections 5.1 and 5.2 for certain gambling events); or
- sales of real property.

Section 4 Certain fund-raising activities by volunteers

The general volunteer exemption described above exempts sales by volunteers in the course of special fund-raising events carried out by charities. However, other public sector bodies such as non-profit sports clubs often undertake similar fund-raising activities. This section exempts sales made by such organizations otherwise than in the course of a business where the salespersons are volunteers, the items sold do not exceed $5 in value and are not sold at an event where similar supplies are made by persons in the business of selling such property (e.g., sales of food on a fair ground). Sales of alcoholic beverages and tobacco products do not qualify for this exemption.

Section 5 Admissions to non-commercial gambling events

Under this section, admissions to gambling events are exempt when the event is carried out exclusively (i.e., 90 percent or more) by volunteers and, in the case of a bingo session or casino event, the games are not held in a commercial hall or other place used principally for conducting gambling activities. Gambling proceeds to the charity are exempt under sections 5.1 and 5.2.

Section 5.1 Bingos, raffles, etc.

This section exempts the gambling proceeds to a charity or non-profit organization that conducts a bingo or raffle or sells break-open tickets or similar rights to play or participate in a game of chance. The exemption does not apply to sales by any non-profit organization that is a lottery corporation named in the regulations nor does it apply to any sale by a charity or non-profit organization of rights to play or participate in lotteries conducted by prescribed lottery corporations. While, technically, lottery tickets are taxable, subsection 188(5) entitles lottery corporations to a special notional input tax credit that removes from the GST base the proceeds from lottery sales that are distributed to governments and grant recipients.

Section 5.2 Bets on casino games, races etc.

This section exempts the gambling proceeds to a charity or non-profit organization (other than a prescribed lottery corporation) that conducts a casino event. All pari-mutuel betting on horse races is also exempt under this section. However, any admissions to casino parlours and race tracks are taxable.

Sections 6 to 10 Nominal consideration

These sections provide exemptions for certain supplies made for consideration which does not exceed the direct cost of the supplies and supplies that are made for no consideration at all.

Section 6 exempts a supply of a service made in the course of a business where the consideration for the supply does not exceed its direct cost (as defined in section 1 of this Part). This exemption would apply, for example, in the case where a public sector body contracts with outside professionals to provide services to its clients and the charge by the public sector body to the client does not exceed the professional's fee to the organization.

Similarly, where a public sector body ordinarily sells inventory for no more than it pays for the goods (including any net GST payable by the body), those sales are exempt. However, if an organization normally sells particular goods for a price that includes a mark-up, and it decides to sell off excess stock at cost, such sales do not qualify for the exemption.

It should also be noted that there may be cases where there is more than one normal selling price for goods or services supplied by a public sector body, depending on the class of recipient. For example, in the case of the professional contract services mentioned above, the usual charge to the client may vary depending on the client's ability to pay. Fees charged to clients whose income is under a certain threshold might recover only the direct cost of the service and therefore would be exempt, while higher fees charged to other clients would not qualify for this exemption.

Section 7 applies to services supplied by a public sector body in the course of special events or activities that are not part of an on-going business. In such cases, the services most likely would be performed by the public sector body's own members or employees. Supplies of such services are exempt if the total revenue from those supplies made during the course of the entire event could not reasonably be expected to exceed the total cost of all direct materials consumed in providing the services.

Section 8 provides an exemption for admissions to a film, slide show or similar presentation where the total revenue from all admissions to the presentation could not reasonably be expected to exceed the total of all costs of renting the film and equipment used in putting on the presentation.

Section 9 provides an additional exemption in respect of admissions. This provision exempts supplies by public sector bodies of admissions to a performance, event or place of amusement where the maximum admission charge is $1 or less.

Section 10 exempts supplies of property or services ordinarily supplied by a public sector body free-of-charge. As such supplies are not considered to be made in the course of a commercial activity, the supplier may not claim input tax credits for purchases for use in making the supplies.

Section 11 Amateur performances and events

Under this provision, ticket sales to spectators of a performance, athletic event or any competitive event are exempt if 90 per cent or more of the performers, athletes or competitors are not remunerated, directly or indirectly, for their participation. For this purpose, government grants and reasonable gifts, prizes and compensation for travel or other incidental expenses are not considered to be remuneration. In addition, the performance or event cannot be specially advertised or represented to be a performance or event featuring the professional participants.

This exemption does not apply to events in which individuals who are professional competitors compete for cash prizes (e.g., a pro-am golf tournament).

Sections 12 and 13 Recreational services

Section 12 exempts the supply by a public sector body of a program that is established and operated by the body and consists of a series of supervised, instructional classes or activities in athletics, music, dance, arts, crafts or other recreational pursuits where the nature of the activities, or the level of skill required, is such that the program can reasonably be expected to be provided primarily to children 14 years of age or under. This includes day-camps organized for such children but does not include camps or programs involving overnight supervision throughout a substantial portion of the program.

This section also provides an exemption for recreational programs provided primarily for underprivileged or mentally or physically disabled individuals.

Section 13 exempts the supply by public sector bodies of board, lodging and recreational services at camps or similar places under a program established to provide such services primarily to underprivileged or mentally or physically disabled individuals or under an arrangement whereby all or part of the camp is reserved for such a purpose.

Sections 14 and 15 Relief of poverty, suffering or distress

Section 14 exempts the supply by public sector bodies of food, beverages and short-term accommodation where these are provided in the course of relieving poverty, suffering or distress of individuals. for example, this provision ensures that if any charge is made for meals or accommodation supplied at a battered women's shelter, GST does not apply. Consistent with this provision, another exemption is provided in section 6 of Part I of this Schedule for short-term accommodation supplied by any person for an amount not exceeding $20 per day or $140 per week.

Section 15 exempts the supply of prepared meals under programs, like that of Meals on Wheels, which are designed to assist needy individuals who, due to age, infirmity or disability, have difficulty preparing adequate meals for themselves. The section also exempts the sale of catered meals to a public sector body for the purpose of such programs.

Section 16 Homemaker services

"Homemaker services" are defined in section 1 of this Part as household or personal care services, such as cleaning, meal preparation and child care, provided to individuals who, due to age, infirmity or disability, require assistance.

Under this provision, homemaker services provided to needy individuals in their homes are exempt when supplied by governments or municipalities, or by non-profit organizations that are either eligible to receive subsidies or grants in respect of the supplies or that provide the services under a contract with a government or municipality. In the latter case, both the fee charged by the non-profit organization to the government or municipality and the fees charged to the individuals are exempt. Homemaker services supplied by charities are exempt in all cases under the general exemption for charities described in section 2 of this Part.

Sections 17 and 18 Memberships

Some non-profit organizations are established to promote the common objectives or ideals of all members of the organization. In such cases, the members individually often do not receive benefits by reason of their membership, other than an indirect benefit that is intended to accrue to all members collectively. Examples include memberships in a students' union and many ratepayers' associations which are established to lobby governments on behalf of property owners in an area. Under section 17, such memberships are exempt. In other cases, members might also receive the right to vote at or participate in meetings and/or receive periodic newsletters, reports or other publications. In these circumstances, the membership still qualifies for the exemption as long as the publication is intended to provide information on the activities of the organization or its financial status and is not sold for a fee to non-members or where the value of the publication is insignificant in relation to the price of the membership (whether or not the publication is also sold to non-members).

As well, some non-profit organizations (particularly professional or trade associations), assist their members by investigating complaints or acting as conciliators in settling disputes involving members. In these cases, the membership still qualifies for exemption provided it does not give rise to benefits beyond those mentioned above.

In addition, organizations may provide their members with the right to purchase goods or services which the organization offers. This is not considered a material benefit provided that the sales are made for fair market value or at discounts that, in total, do not represent a significant portion of the membership fee. However, section 17 specifically excludes from the exemption memberships in a club operated mainly to provide dining, recreational or sporting facilities for members.

Section 18 exempts all memberships in organizations in which persons are required to be members in order to maintain a professional status recognized by statute, such as memberships in a provincial law society. In this example, the exemption applies to both the lawyers' memberships and student memberships in the society. It is sufficient that a professional status be recognized in at least one province for supplies of memberships in the professional association to be exempt in all provinces.

Under both section 17 and 18, an organization may elect to have all its otherwise exempt supplies of memberships treated as taxable supplies. An organization might wish to make this election where most of its members are in a position to claim input tax credits for any tax paid on their memberships.

Section 19 Library borrowing privileges

This section exempts the supply of library cards issued by public lending libraries. It is not necessary to exempt library fines as these are not considered to be consideration for supplies and, therefore, have no GST consequences.

Sections 20 to 23 Standard governmental and municipal services

Section 20 sets out a number of supplies that are exempt when made by a government, municipality, or a board, commission or other body established by a government or municipality. The list includes the provision of licences (e.g., drivers' licences), certificates (e.g., birth certificates), passports, registration services, and quotas (e.g., fees charged by a marketing board for a dairy quota). Consistent with the taxation of provincial mark-ups on alcoholic beverages sold domestically, this exemption specifically excludes charges for permits or similar rights issued to persons importing alcoholic beverages.

The list also includes garbage collection services, other than collection services that are not part of the basic service supplied on a regularly scheduled basis. As well, where persons haul garbage to a disposal site and pay a fee for the right to dispose of the garbage, the fee is exempt.

Excluded from this exemption are supplies described in paragraphs 146(b), (c) and (d) of the Act. Items excluded under these paragraphs are non-commercial hunting (including trapping) and fishing licences, licences to take or remove minerals, forestry products, water or fishery products where the right is sold to a consumer or an unregistered small supplier (e.g., the provision of a right to a consumer to cut and remove firewood), and the right to enter, have access to, or use property of a government, municipality or related board or commission (e.g., grazing rights sold by a government). However, most rights to explore for or exploit natural resources are not subject to GST pursuant to section 162 of the Act.

Section 21 is intended to provide a blanket exemption for standard municipal services provided to property owners in a particular locale. This includes such services as road building and snow removal. In most municipalities, these services are financed from general revenues. However, in some cases, the municipality may identify the cost of the service separately to the resident. This provision is intended to ensure that such charges are not taxable. However, optional services supplied to individual households on a fee-for-service basis are not covered under the exemption. This includes, for example, charges for snow removal on private property, driveway paving and tree removal - in essence, commercial activities which are in competition with the private sector. Also excluded from the exemption are testing and inspection services that are for the purpose of verifying compliance with standards or suitability of property for consumption, use or supply in a particular manner.

Section 22 exempts basic water and sewerage system charges to residents, including installation or hook-up fees. However, where a municipality charges a separate fee to a property owner to repair or maintain a part of an existing line which is for the sole use of the property owner, GST applies.

The Minister of National Revenue is given authority to designate an organization operating a water distribution, sewerage or drainage system for or on behalf of a municipality to be a municipality for the purposes of this section.

Section 23 exempts water supplies by municipalities or designated agencies referred to in section 22.

Section 24 Municipal transit

Consistent with the treatment of standard municipal services, municipal transit services are exempt from GST. "Municipal transit service" is defined in section 1 of this Part as a public passenger transportation service provided by a transit authority (also defined in section 1) whose services are 90 per cent or more within a particular municipality and its surrounding areas. A municipal transit service does not include a charter service (e.g., if a school charters a city bus for a special field trip) or a service that is part of a tour (e.g., where a local transit authority offers sight-seeing tours of a city).

The Minister of National Revenue is given the authority to designate a particular public transportation service to be an exempt municipal transit service.

Section 25 Real property supplies

Under this section, most supplies of real property by charities, non-profit organizations, municipalities, hospitals, schools, universities and public colleges are exempt. This exemption does not cover the following:

- residential property (exemptions for used housing are contained within Part I of this Schedule);
- real property that the organization is considered to have made a supply of as a result of a change in the use of the property;

- vacant land sold to an individual (i.e. land on which there is no structure that was used by the body, including structures leased by the body to other persons);
- real property on which the organization has claimed, or is entitled to claim, an input tax credit (i.e., where the property was used primarily in a commercial activity; in the case of a sale, immediately before transfer of ownership or possession, whichever is earlier, and in the case of a lease, immediately before each lease payment is paid or becomes due, whichever is earlier. The test is the extent of commercial use apart from the particular sale or lease in question.);
- short-term accommodation (less than one month) where supplied by a non-profit organization, municipality, university, public college or school authority;
- commercial property leased on a short-term basis in the course of a business (e.g., regular rentals of banquet facilities);
- real property supplies that the organization has elected, under section 211 of the Act, to be treated as taxable supplies; and
- parking spaces supplied in the course of a business of the organization.

Section 26 Labour organizations

Under this section, supplies of property or services between a non-profit organization that is established for the benefit of organized labour and any of its member or affiliated trade unions are exempt.

Part VII

Financial Services

This Part exempts domestic financial services. Financial services and other related terms are defined in subsection 123(1) of the Act. Section 1 exempts financial services other than those zero-rated under Part IX of Schedule VI. Section 2 exempts supplies of services or leases between two members of a closely related group who have elected to exempt these supplies under subsection 150(1).

Part VIII

Ferry, Road and Bridge Tolls

This Part exempts ferry, road and bridge tolls (whether charged by governments or private-sector bodies) from GST.

SCHEDULE VI

Zero-Rated Property and Services

This Schedule contains nine Parts listing supplies of property and services that are zero-rated under the GST. These include:

Part I	Prescription Drugs
Part II	Medical Devices
Part III	Basic Groceries
Part IV	Agriculture and Fishing
Part V	Exports
Part VI	Travel Services
Part VII	Transportation Services
Part VIII	International Organizations and Officials
Part IX	Financial Services

Part I

Prescription Drugs

Section 1 Definitions

This section provides definitions of "pharmacist", "practitioner" and "prescription" for the purposes of this Part.

Section 2 Federally-controlled drugs

This section contains a listing of drugs to be unconditionally zero-rated at all levels of production and distribution. Paragraphs (a) to (d) enumerate drugs that may only be sold on prescription pursuant to the Food and Drugs Act and regulations thereunder and the Narcotics Control Act and regulations made thereunder. A number of non-prescription drugs used to treat life-threatening illnesses, enumerated in paragraph (e) of the section, are also zero-rated.

Section 3 Other drugs sold on prescription

A supply of a drug not enumerated in section 2 is zero-rated if the supply is made to a person for human use on the prescription of a practitioner. Drugs that are not required to be sold only on a prescription basis by federal legislation are zero-rated under this section when supplied by way of prescription.

Section 4 Dispensing fees

The service of dispensing a zero-rated drug is zero-rated under this section.

Part II

Medical Devices

This Part enumerates a number of categories of zero-rated medical devices. These include goods such as canes, crutches, wheelchairs, hospital beds, artificial limbs, hearing aids and eyeglasses. Specially designed parts, accessories and attachments for tax-free medical devices as well as services relating to installing, maintaining, restoring, repairing or modifying these properties will also be tax-free. In addition, authority is provided to prescribe other medical devices and related services under the GST.

Part III

Basic Groceries

This Part sets out the basic grocery products which are tax-free under the GST.

Section 1 Basic groceries

This provision is very similar to the exemption for foodstuffs and beverages under the current federal sales tax. Under Section 1, supplies of food and beverages for human consumption are generally zero-rated, unless specifically excluded by paragraphs (a) through (z). These exclusions are elaborated upon below.

Paragraphs (a) to (l) Alcoholic beverages, soft drinks, candies, and snack foods

These subsections are virtually identical to those contained in the current FST exemption for food and beverages.

As a result of these exclusions, alcoholic beverages, soft drinks, candies, confections and snack foods are subject to GST.

Paragraph (m) Sweetened baked goods and similar products

The vast majority of sweetened baked goods and similar products sold for home consumption -- for example, whole cakes, pies, or family sized packages of cookies, doughnuts or muffins -- are tax-free. Paragraph (m) provides that the sale of products such as doughnuts, cookies or muffins are taxable where they are prepackaged for sale to consumers in quantities less than six items, or, if they are not sold in prepackaged form, where a consumer purchases fewer than six items at a time.

Similarly, take-out eating establishments are not required to charge tax on their sales of six or more doughnuts, muffins, cookies or similar products where they are sold for consumption off the premises. Single serving items, such as doughnuts, which are prepackaged in quantities less than six are taxable regardless of how many such packages are purchased by a customer. This treatment provides for greater simplicity at the check-out counter as it does not require the cashier to count the number of packages purchased by the consumer. Moreover, because the tax status of the packages does not vary depending on the number of packages sold, this treatment does not interfere with the use of streamlined accounting by the vendor (see section 227 of the Act).

Bread products such as raisin bagels, English muffins, raisin bread, or croissants are not taxable, provided that they do not have a sweetened filling or coating. Crackers (such as saltines, etc.) are not taxable; however products such as Graham crackers, for example, which are typically sold as cookies, are subject to GST.

Paragraph (n) Single servings of yoghurt, pudding or beverages

Under this paragraph, single servings of yoghurt, pudding or beverages (other than unflavoured milk) are taxable when packaged and sold individually. However, where these items are sold in a package containing two or more single servings -- for example, a package of three juice cartons, -- they are tax-free. These items are also tax-free when prepared and packaged specially for babies.

Given that single servings of yoghurt, pudding and beverages are frequently purchased in convenience stores for immediate consumption and compete directly with identical products sold in fast food outlets and cafeterias, a significant competitive inequity would be created in the absence of this provision.

Paragraph (o) Prepared foods

This paragraph lists prepared foods and beverages which are taxable under the GST:

(i) food and beverages heated for the purpose of consumption This includes, for example, a barbecued chicken sold in heated form ready for immediate consumption. It does not, however, include the sale by a bakery of freshly baked bread still warm from the baking process as such bread generally is not heated specifically for the purpose of immediate consumption.

(ii) prepared salads This includes all prepared salads, whether sold in single servings or in larger size containers. It does not however, include a can of fruit salad, for example, as this is not considered to be in a form suitable for immediate consumption.

(iii) sandwiches and similar products This includes, for example, sandwiches sold in convenience store lunch counters and ready for immediate consumption.

(iv) cheese platters or other arrangements of prepared food This includes, for example, trays of prepared foods prepared as part of a catering service.

(v) single servings of ice cream and similar products dispensed on the premises This includes sales of ice cream cones, and similar products dispensed on the premises.

(vi) beverages dispensed on the premises This includes servings of all beverages when dispensed and served on the premises.

Paragraph (p) Vending machine sales

Given that, often, the same or similar products may be purchased either from vending machines or cafeterias and fast food outlets, to ensure consistency of treatment, all sales of food and beverages through vending machines are taxable under this paragraph.

Paragraph (q) Other sales in eating-establishments

Under this paragraph, where an establishment's sales of items (a) through (p) above constitute 90 per cent or more of its total sales of food and beverages, its sales of other food and beverages which are in a form suitable for immediate consumption will be taxable as well. This provision ensures, for example, that rolls provided for a separate charge in a restaurant are taxable. However, where an establishment falling under this category sells food products not in a form suitable for immediate consumption, they are still zero-rated. It should be noted that the determination of whether a food or beverage is in a form suitable for immediate consumption takes into consideration not only the nature of the product per se (e.g., a bag of coffee beans is tax-free), but also the amount of the food or beverage contained in the item sold (e.g., a two-litre container of ice cream is tax-free). Also tax-free are goods described in paragraph (m) when sold at an eating establishment for consumption off the premises and in quantities exceeding five single servings (e.g. where a restaurant sells a whole cake for take-out, it is tax-free).

Part IV

Agriculture and Fishing

This Part sets out agricultural and fishing goods to be zero-rated under the GST. It should be noted that many products sold by the agricultural and fishing sectors (such as fresh fruit and vegetables, milk, honey, and fresh fish) are zero-rated under Part III of this schedule covering basic groceries.

The combined effect of these two parts is that the vast majority of products sold by farmers and fishermen are zero-rated. Taxable sales of goods by farmers include cut flowers, foliage, bedding plants, sod, living trees, firewood, fur and animal hides.

In addition, as the sections in this Part refer only to goods, services supplied by farmers and fishermen are generally taxable. These would include, for example, road clearing services, harvesting services provided to another farmer, and stud or artificial insemination services. Of course, where these are supplied to other registrants, they will be able to claim input tax credits in respect of such purchases in the normal manner.

Section 1 Farm livestock

This provision zero-rates farm livestock, poultry and bees ordinarily used to produce wool or food for human consumption. It should be noted that sales of horses are taxable, as they are not ordinarily used to produce food for human consumption.

Sections 2 and 3 Grains, seeds, and crops

This section zero-rates grain or seeds in their natural state or treated for seeding purposes, hay, silage or other fodder crops ordinarily used to produce food for human consumption or feed for livestock. To qualify for tax-free status, they must be supplied in quantities larger than that typically sold to consumers. Hence, for example, small packets of garden seeds sold to consumers are not zero-rated under this provision.

Section 3 zero-rates hops, barley, flax seed, straw, sugar cane and sugar beets are zero-rated.

Section 4 Poultry and Fish Eggs

This section zero-rates poultry and fish eggs produced for hatching purposes.

Section 5 Bulk fertilizer

Supplies of bulk fertilizer in quantities exceeding 500 kg are zero-rated under this section. Hence, fertilizer sold between farmers, for example, will typically be zero-rated. Purchases by individual consumers for garden use, on the other hand, are generally taxable.

Section 6 Wool

This provision zero-rates raw wool. However, sales of wool after it has been further processed, for example, from a wool mill to a textile manufacturer, are taxable in the normal manner.

Section 7 Tobacco

Under this provision, supplies of unprocessed tobacco leaves are not taxable. Of course, sales of tobacco at later stages in the production chain are subject to GST in the normal manner.

Section 8 Fish and marine animals

Sales of fish and marine animals, other than those not ordinarily used as food (for example, minnows which are typically used as bait) are zero-rated under this section.

Section 9 Sharecropping

Under this provision, farmland rented under a sharecropping arrangement is zero-rated to the extent that the consideration for the supply is a share of production of zero-rated crops. If, for example, farmland is rented from one farmer to another for $1,000 plus, say, one-third of its farm production, tax is only to be charged on the $1,000 payment. This simplifies the operation of the GST in these types of transactions.

Section 10 Prescribed property

In contrast to the other sections in this Part which focus on sales made by farmers and fishermen, this section specifically zero-rates items purchased by them.

Farmers and fishermen typically do not collect tax on their sales but still pay GST on most of their purchases. As a result, they often are in a net refund position for GST purposes. In recognition of the potential cash flow problems this could entail (and the additional compliance problems for small farm businesses to file monthly to reduce their cash flow costs), selected agriculture and fishing purchases to be prescribed by regulation are zero-rated under this section.

This list of zero-rated items will be limited to major items of a type purchased exclusively by farmers and fishermen -- for example, combines, large tractors, commercial fishing boats and commercial fishing nets.

By restricting the list to major items, the objective is to simplify compliance for farmers and fishermen while, at the same time, ensuring that no additional compliance burden is created for general retailers -- such as hardware stores -- which will continue to collect tax on all their sales. Of course, farmers and fishermen will still be able to claim input tax credits in the normal manner for any business purchases of items not included in the prescribed list.

Zero-rating major farming and fishing inputs significantly alleviates, potential cash flow problems faced by farmers and fishermen. This reduces the need for small businesses to file monthly and, in turn, result in an overall lowering of compliance and administrative costs.

Part V

Exports

The GST is designed as a tax on consumption in Canada. As exports are for consumption outside Canada, they do not attract GST. This Part lists supplies made in Canada that are zero-rated as exports.

Under section 165 (the principal charging section of the Act), tax applies only on supplies made in Canada. Technically, therefore, it is not necessary to zero-rate exports if they are supplies made outside Canada.

Subsection 142(2) of the Act sets out the general rules for determining if a supply is made outside Canada. Under that subsection, for example, a sale of goods to be delivered by the supplier directly to the purchaser in a foreign country would be treated as a supply made outside Canada. Consequently, the supplier would not collect tax on the sale, even though it is not specifically included as a zero-rated export in this Part.

In addition to the general rule for supplies made outside Canada, sections 143 and 144 of the Act provide that certain supplies by non-residents, as well as all supplies of imported goods held in bond under the Customs Act, are considered to be supplies made outside Canada. Therefore, GST does not apply to such supplies, even if they are not specifically enumerated in the list of zero-rated exports described below.

Section 1 Exported goods

The sale of goods that are delivered or made available to the purchaser outside Canada is considered to be a supply made outside Canada under subsection 142(2) of the Act. As such, it is beyond the scope of the charging section and is not subject to GST.

This section applies to goods that are supplied in Canada (i.e., delivered or made available to the purchaser in Canada) and subsequently exported by that purchaser.

Under this provision, a supplier is permitted to sell goods in Canada on a zero-rated basis if:

- the purchaser exports the property and does not consume, use or supply it in Canada before exportation;
- the property is not further processed, transformed or altered in Canada except to the extent reasonably necessary or incidental to its exportation (This might include, for example, refrigeration, export packing, etc.);
- the supplier maintains evidence of export satisfactory to the Minister of National Revenue and
- the property is not transported in the purchaser's own trucks or otherwise than by common carrier.

This section does not apply in the case of supplies to consumers. Nor does it apply in the case of supplies of excisable goods (that is, beer, spirits or tobacco products). Subject to the zero-rating provision for sales in duty-free shops and goods mailed or delivered by a common carrier to a place outside Canada (see sections 11 and 12 of this Part), consumers are required to pay GST on goods purchased in Canada. Under section 252 of the Act, non-residents are of course entitled to recover the tax paid on goods that are exported by them when they depart Canada. The rules relating to exports of excisable goods are described below under section 3 of this Part.

Section 2 Supplies to unregistered foreign carriers

This section zero-rates virtually all supplies of property or services to a non-resident operator of a ship, aircraft or railway if the operator is not a GST registrant. The purpose of this provision is to ensure that such operators are not disadvantaged relative to operators who are GST registrants and, as such, entitled to recover any tax paid by claiming input tax credits.

This provision applies to commercial water, air and rail carriers, ships and aircraft operated by or on behalf of a foreign government, scientific research vessels and ships used for laying or repairing oceanic telegraph cables.

Items zero-rated under this provision include, among other things, fuel and supplies used in the operation of the ship, aircraft or rail service, repair and maintenance services, railway junction and switching charges, pilotage services and rights in respect of real property for which a fee is charged (such as aircraft landing fees, railway right-of-way charges, warehouse fees, etc.).

Specifically excluded from this provision are purchases of real property in Canada. Also excluded is any property or service not acquired for consumption, use or supply in the course of the foreign operator's carriage business or in the course of operating the relevant conveyance.

Section 3 Excisable goods

This provision zero-rates spirits, beer and tobacco products supplied to a recipient who, in turn, exports the goods in bond pursuant to the Excise Act.

Section 4 Services performed on temporarily imported goods

This section zero-rates any service (other than a transportation service) performed on goods temporarily imported into Canada for the sole purpose of having the services performed. This would include, for example, repair services in respect of goods returned to a manufacturer in Canada. The temporarily imported good itself would be relieved under section 8 of Schedule VII to the Act (non-taxable importations). It should be noted that any goods supplied in conjunction with such a service generally are

(a) zero-rated pursuant to section 138 of the Act if the goods are incidental to the services supplied,

(b) zero-rated under section 1 or 12 of this Part if the goods are supplied in Canada for export, or

(c) not taxable at all under the rules set out in sections 142, 143, and 144 of the Act for determining when a supply of tangible personal property is made outside Canada.

Section 5 Agent's services

This section zero-rates a purchasing or selling agent's services to a non-resident. Paragraph (a) deals with the case where the agent procures for a non-resident client any property or service included elsewhere in the list of zero-rated exports. This ensures that exports acquired through a purchasing agent leave the country completely free of GST.

Paragraph (b) addresses the situation where the agent provides services in respect of a supply made outside Canada by or to the non-resident. Under this paragraph, for example, a domestic travel agent who books a room at a foreign hotel would not charge GST on any commission charged to the hotel since the accommodation services would be provided outside Canada.

In interpreting paragraph (b), it should be noted that certain supplies made by non-residents in Canada are, under section 143 of the Act, considered to be supplies made outside Canada. As a consequence, a booking agent acting for a non-resident performer is not required to charge GST on commissions charged to the performer (unless the performer supplies admissions directly to consumers and, therefore, is required to become a GST registrant). By the same token, a customs broker providing services to an unregistered non-resident who resupplies imported goods in Canada is not required to charge GST for agency services billed to the non-resident.

Section 6 Emergency repair services

A domestic carrier, such as a railway, often is responsible for repairing damages to cargo containers or conveyances belonging to other carriers while the containers or conveyances are in the domestic carrier's possession, In many circumstances, the carrier bills the owner of the container or conveyance for the repair services provided. This provision zero-rates such repair services when billed to a non-resident. However, where such services are billed to a resident, GST applies and the recipient is able to claim an input tax credit for the tax paid in the normal manner.

Section 7 General rule - exports of services provided to non-residents

This is a general provision designed to zero-rate exports of services supplied to non-residents. In the case of a service supplied to a non-resident individual, the individual must be outside the country throughout the time the service is performed to qualify for relief under this provision. A number of services are specifically excluded from this section under paragraphs (a) to (e) -- this, on the premise that the benefits of such services are realized (i.e., consumed) in Canada.

However, advisory, consulting, or professional services supplied to non-resident businesses are zero-rated, regardless of where the benefit of such services may be realized unless they are in respect of real property situated in Canada (e.g., an architectural service related to a building in Canada), or goods ordinarily situated in Canada or to be delivered in Canada. The services of acting as an agent for a non-resident person are also excluded from this section as they are dealt with under section 5 of this Part.

Section 8 Advertising services

This section zero-rates advertising services supplied to a non-resident who is not required to be registered to collect GST. It therefore ensures that a unregistered non-resident is not put at a disadvantage relative to a registered person who is able to recover the GST paid through the input tax credit mechanism.

Section 9 Advisory services

This provision is designed to zero-rate advisory, consulting or research services supplied to a non-resident contemplating taking up residence or setting up a business in Canada. Included in this provision, for example, would be legal services provided to potential immigrants and the services of advising foreign corporations of various laws and regulation with which they would have to comply if branches were to be opened or business ventures were pursued in Canada.

Section 10 Intellectual property

Intellectual property rights supplied to non-residents who are not required to be GST registrants are zero-rated under this provision.

Section 11 Duty-free shops

This provision zero-rates sales by duty-free shops to persons departing Canada.

Section 12 Goods sold to individuals

Goods delivered or made available to an individual in Canada generally are subject to GST, even if the individual intends to export the goods. However, this provision zero-rates goods supplied to an individual if the supplier mails the goods or has a common carrier deliver the goods to an address outside Canada.

Section 13 Services under warranty of non-resident

Where a registrant supplies services (e.g., car repairs) covered under a warranty provided by a non-resident person that is not required to be registered for GST purposes (i.e., a non-resident that does not actually carry on business in Canada), and bills the non-resident for expenses incurred in supplying the services, GST does not apply to the amount charged by the registrant to the non-resident.

Part VI

Travel Services

Section 163 of the Act sets out the rules for determining the taxable and non-taxable portions of a tour package. The taxable portion is that part of a tour which, if purchased by a traveller directly (and not as part of a tour package), would be subject to GST. A tour package is defined as one in which transportation, accommodation, meals and other travel services are provided for one all-inclusive price.

This Part zero-rates the non-taxable portion of a tour package as determined under section 163. The non-taxable portion generally will include the costs relating to international transportation services as well as accommodation and other supplies made outside Canada -- in other words, those items that would not be taxed if they were purchased separately by the traveller. However, the remaining part of the tour package (if there is one), such as that relating to domestic transportation and other supplies made in Canada, is taxable.

Part VII

Transportation Services

With the notable exception of municipal transit services, GST applies to domestic passenger and freight transportation services. The exemption for municipal transit services is provided in section 24 of Part I to Schedule I of the Act.

This Part zero-rates international freight and passenger transportation services.

Subsection 1(1) Definitions

The following are key terms used throughout this Part:

"carrier" This term identifies a person who supplies a freight transportation service. There is no limit on the number of carriers that may be engaged in any given freight movement. Nor is there any requirement that a person physically perform a freight transportation service in order to be a carrier: the person need only assume liability as a supplier of a freight transportation service in order to be a carrier. Consequently, a person who contracts with a shipper to move goods from one place to another is still considered to be a carrier of the goods, even if the work is sub-contracted to another carrier who physically performs the entire service. Finally, it should be noted that a person does not have to be government-licensed in order to be considered to be a carrier for GST purposes. Therefore, independent owner-operators of trucks and courier vehicles are treated as carriers if they supply freight transportation services, whether or not they are required by law to be licensed as carriers.

"continuous freight movement" In practice, continuous freight movement generally refers to a situation where two or more carriers interline with each other to move goods to their destination although, technically, the term also includes a freight movement by one carrier. In addition, it includes cases where one carrier fully sub-contracts a freight movement to another carrier -- for example, where a trucking firm agrees to move a shipper's goods and sub-contracts the move to an independent owner-operator. The term "continuous freight movement" is particularly relevant for the GST treatment of interline settlements (see the following subsection and section 11 of this Part), as well as for the zero-rating provision for the domestic portion of inbound international freight movements (see section 10).

"continuous journey" This term is important for determining whether an otherwise domestic passenger transportation service qualifies as part of a zero-rated international trip under sections 2 or 3 in this Part. It is not uncommon for a traveller to have a single ticket in respect of two or more transportation services. For example, a traveller may purchase an airline ticket for two flights: one from Winnipeg to Montreal in order to connect with another flight from Montreal to an overseas destination. Where multiple transportation services are provided on a single ticket, each of the services is treated as part of a continuous journey and accorded the same GST status. In other words, there is no requirement to distinguish between different services and prorate ticket prices. For example, in the case of air travel, as long as there is at least one overseas origin, destination or stopover, all passenger transportation services included in the ticket are treated as being international services and zero-rated as such.

Instances arise where separate tickets are issued to travellers for different portions of a journey. For example, a traveller may approach a travel agent to purchase an overseas airline ticket, along with a shuttle bus ticket to the domestic airport of departure. In certain circumstances, separately-ticketed domestic services are considered to form part of a continuous international journey and are zero-rated as such. In order to qualify as part of a zero-rated continuous journey

- all tickets must be issued by the same supplier or travel agent,

- all tickets must be for the same traveller,
- any intermediate stop between the legs of the journey for which separate tickets are issued are for connection purposes only,
- the continuous journey must contain an international origin, destination or stopover, and
- the supplier or travel agent must maintain evidence sufficient to demonstrate to the satisfaction of the Minister of National Revenue that the conditions for treating a domestic ticket as part of a continuous international journey have been met (i.e., much the same requirement as under the existing Air Transportation Tax).

"continuous outbound freight movement" The transportation of goods to a place outside Canada under a single contract of carriage is zero-rated under section 6 of this Part if the freight charge is $5 or more. The term "continuous outbound freight movement" is relevant to those instances where goods destined for export are shipped under two or more contracts of carriage for sequential parts of the journey and the first contract of carriage is for an entirely domestic move. A typical case is where an exporter contracts with a domestic carrier to have goods shipped to a domestic port, at which point a separate bill of lading is cut for the ocean leg of the journey. Under section 7, a domestic freight transportation service may be zero-rated if the service is part of a continuous outbound freight movement. To qualify as such, the definition of continuous outbound freight movement states that the goods being transported must not be further processed, transformed or altered in Canada once the shipper delivers the goods to the domestic carrier, except to the extent reasonably necessary for their transportation. For example, it may be necessary to freeze goods to ensure that they arrive at their destination in a usable condition, or to disassemble or pack items at a port to prevent in-transit damage to the goods. In each of these instances, the transformation or alteration of the goods is considered to be necessary to their transportation and, therefore, does not prevent the domestic shipment from qualifying as part of a continuous outbound freight movement. However, in the case of, say, a domestic shipment of iron ore to a steel manufacturer who, in turn, exports the steel produced from the ore, transforming the iron ore into steel is not necessary to its transportation. Hence, the domestic shipment of the ore to the steel refiner in this example would not qualify as being part of a continuous outbound freight movement.

"freight transportation service" Postal and courier services are included in the definition of freight transportation services. Moreover, any property or services supplied that are incidental to a freight transportation service are considered to form part of the freight transportation service. While there is a general provision in section 138 of the Act which treats incidental supplies as being part of another primary supply, that section only applies where the primary and the incidental supply are provided at one all-inclusive price. The definition of freight transportation service explicitly provides that a property or service may be treated as being incidental to a freight transportation service whether or not a separately identifiable charge is made for the incidental property or service. As a consequence, a carrier who provides things like warehouse, packing and loading services in conjunction with a basic freight transportation service, for GST purposes, is able to treat the incidental services in the same manner as the basic freight transportation service provided; that is, incidental items are taxable or zero-rated depending on the GST status of the basic freight change.

"place outside Canada" Sections 8 and 9 of this Part zero-rate certain freight transportation services for the shipment of goods from a place outside Canada. For purposes of those provisions, a place outside Canada includes a place in Canada if the goods being transported are in bond and have not been released from Customs. Consequently, if, for example, goods enter Canada through the Port of Halifax, and a separate rail bill of lading is cut for an overland movement to Montreal, the domestic movement by rail is considered to be outside Canada and zero-rated as such if the goods are not released until they reach Montreal.

Subsection 1(2) Deeming rule - interline settlements

Recognizing the substantial complexity that would be involved in applying GST to interline settlements between freight carriers, section 11 of this part zero-rates interline settlements.

The contractual relationships between carriers in respect of any given freight movement can vary. In some cases, an interline carrier simply works under sub-contract to another carrier. In other cases, interline carriers may have an implied contract with a shipper or consignee. In many cases, the actual contractual relationships between carriers, shippers and consignees are unclear. Given the often subtle differences in contractual arrangements, subsection 2 provides a set of rules designed to treat all interline freight settlements between carriers as being payments for freight services supplied to each other, and not payments through an agent from the shippers or consignees of goods being transported. This enables all such interline settlement payments to be zero-rated under section 11 without having first to determine the actual contractual relationships between carriers. However, where a carrier receives payment for a taxable domestic freight movement from a shipper (or consignee in the case of a freight-collect movement), that carrier, under subsection 2, is considered to have supplied the freight service, even if part of the payment is collected as agent for any other interline carriers involved in the movement. In the case of a part-prepaid and part-collect movement, the origin and the destination carrier are considered to have supplied freight transportation services to the extent that each has an amount collectible from the shipper and consignee respectively. The combined result of these rules is that all amounts paid by a shipper or consignee to a carrier are taxable for a domestic movement, while any subsequent disbursements amongst interlining carriers are not taxable.

Sections 2 and 3 Passenger service

These sections zero-rate international passenger transportation services. Section 2 deals with passenger services, other than air travel, that begin, end or otherwise involve a stopover outside Canada. In the case of a continuous journey that does not involve transportation by air, all transportation services that are part of the journey are zero-rated if the journey beings, ends or involves a stopover outside Canada. Specifically excluded from this zero-rating provision are day-trips outside the country: that is, trips (otherwise than by air) beginning and ending in Canada where the traveller does not leave the country for more than 24 consecutive hours. Consequently, things like tour boat rides along the Great Lakes are not zero-rated if they start and end in Canada, even if the boat docks on the U.S. side at some point. By the same token, an otherwise all-Canadian bus trip does not qualify for zero-rating under this provision merely because the bus stops at a U.S. border town for lunch.

Section 3 zero-rates overseas air travel (i.e., other than to the continental United States or the Islands of St. Pierre and Miquelon), as well as services that are part of a continuous journey that involves overseas air travel. Generally, this means that transborder air travel to the United States is subject to GST unless of course the journey also involves another foreign destination. It should be noted, however, that an air travel ticket from the U.S. to Canada that is purchased outside Canada is zero-rated under paragraph (c) in section 3.

Section 4 Excess baggage charges

In the vast majority of cases, the transportation of a traveller's baggage is incidental to and included in the charge for any passenger transportation service provided to the traveller. Under the incidental supply rule contained in section 138, the transportation of the traveller's baggage is considered to be part of the passenger transportation service provided and, therefore, taxable or zero-rated according to the tax status of the passenger transportation service. Where a separate charge is made to a traveller for baggage transportation services (the most common being excess baggage charges), the separate charge is not covered under section 138 of the Act as an incidental supply. Section 4 addresses this situation by zero-rating baggage charges if they relate to an otherwise zero-rated international passenger transportation service.

Section 5 In-flight charges

This section zero-rates in-flight charges to passengers for goods delivered or services performed aboard an international flight while the flight is within Canada. Such charges include, for example, those for food and beverages served on board the aircraft. For purposes of this provision, international flight means a commercially-operated passenger flight that does not begin and end in Canada. An international flight may not take on passengers in Canada who are flying to other Canadian destinations. This is essentially the same definition of international flight currently contained in the Aircraft (International Service) Remission Order (P.C. 1978-3762).

Sections 6 and 7 Outbound international freight

These sections zero-rate outbound international freight transportation services valued at $5 or more. Section 6 deals with the basic case where a shipper contracts to have goods transported from a place in Canada to a place outside Canada. Section 7 addresses the case where a shipper purchases a domestic freight service that is part of a continuous outbound freight movement. A typical example of this sort of move is where goods are transported by truck or rail to a port under one bill of lading, at which point a second bill is cut for the ocean leg of the movement. As long as the domestic move is part of a continuous outbound freight movement, and the shipper provides the carrier with a declaration on the relevant freight documents to this effect, the domestic service is zero-rated under section 7.

Under the provisions set out in subsection 221(3) of the Act, a carrier who accepts a false declaration from a shipper under section 7 of this Part is held harmless as long as the carrier could not reasonably be expected to know that the declaration is false. However, the shipper remains liable for the tax. A shipper who wilfully makes a false declaration is also guilty of an offense under one or more of the provisions contained in sections 326 through 332 of the Act.

Sections 8, 9 and 10 Inbound international freight

These sections zero-rate freight transportation services for the shipment of goods from a place outside Canada. For these purposes, a place outside Canada includes a place in Canada if, at that time, the goods being transported are held in bond and have not been released from Canada Customs.

Section 8 zero-rates the basic case of a service of moving freight from a place outside Canada to a place inside Canada. This includes any freight transportation service that straddles the point of Customs release.

Section 9 zero-rates a freight transportation service from a place outside Canada to another place outside Canada. This includes fully in bond freight transportation services, as well as in-transit moves through Canada from one country to another country.

Section 10 zero-rates an otherwise taxable domestic freight transportation service if it is part of a continuous freight movement from a place outside Canada to a destination inside Canada specified by the shipper of the goods. This provision applies in the case where, for example, goods destined for Red Deer are flown into Canada and released from Canada Customs in Calgary, at which point a truck carrier is engaged under a separate contract of carriage to deliver the goods to the consignee in Red Deer. As long as the truck carrier has documentary evidence satisfactory to the Minister of National Revenue that the truck movement is part of continuous freight movement from a place outside Canada, the domestic truck service is zero-rated. Satisfactory evidence would include, for example, a copy of the through bill of lading or other movement documents clearly indicating Red Deer as the destination specified by the shipper of the goods.

Section 11 Interline freight settlements

This section zero-rates interline settlements between freight carriers, whether the settlements are in respect of domestic or international movements. Also included under this provision are payments by a trucking company to independent owner-operators. Zero-rating interline settlements substantially simplifies the operation of the GST for freight carriers given the complex and ambiguous legal relationships that may exist between carriers and shippers. Under the rules set out above in subsection 1(1) of this Part, payments distributed between carriers in respect of a given continuous freight movement are considered to be in respect of freight transportation services supplied by one carrier to another, and not by the carriers to the shipper or consignee of the goods being transported. As a result, only the carrier who settles a domestic freight bill directly with the shipper or consignee is required to collect GST on the bill. Any subsequent disbursements to interlining carriers are zero-rated.

Section 12 International freight forwarders

Freight forwarders who present themselves as carriers and assume liability as carriers are subject to the same rules as all other carriers: their supplies of domestic freight services are taxable, while their international services are zero-rated. Generally, forwarders acting as purchasing agents of freight services for shippers are required to collect GST on these commissions in the same manner as any other agent. Any tax collectible is of course creditable in the normal manner to their business customers engaged in commercial activities.

Certain international freight forwarding services are zero-rated under section 5 in Part V of this Schedule which deals with "exports" of agency services. Under that provision, for example, a forwarder acting as an agent for an unregistered non-resident (for example, a client in Europe) would not charge GST on any services rendered in purchasing international freight services from an unregistered non-resident shipping line (i.e. since the services provided by the non-resident shipping line are considered to be made outside Canada by virtue of section 143 of the Act). However, no such parallel relief is provided under that section where a forwarder in the same circumstances purchases the same service from a registered carrier. To rectify this anomaly, section 11 of this Part zero-rates a forwarding agent's service to an unregistered non-resident client where the service is to purchase an otherwise zero-rated international freight transportation service for the client. Consistent with the underlying principles of the GST, this also guards against hidden tax on exports (i.e., in the case of outbound freight) and prevents cascading on imports where the forwarding agent purchases inbound international freight services for an unregistered non-resident client.

Part VIII

International Organizations and Officials

Section 1 Governor General

This section zero-rates supplies to the Governor General.

Section 2 International bridge authorities

This section zero-rates supplies to an international bridge or tunnel authority for the construction of a bridge or tunnel between Canada and the United States.

Part IX

Financial Services

This Part describes the circumstances in which a financial service is zero-rated. A financial service is exempt unless it is explicitly included in this Part. "Financial services" and other related terms are defined in subsection 123(1) of the Act. A financial institution is eligible to claim an input tax credit in respect of purchases to the extent they relate to services described in this Part.

Section 1 "Exports" of Financial Services

Generally, a service (other than one that relates to an insurance policy described in section 2) provided to a non-resident person is zero-rated under this section. Paragraphs (a) to (e) outline specific exceptions to this general rule.

Paragraph (a) precludes a financial service from being zero-rated if it relates to a debt that arises from deposits in Canada and the instrument issued as evidence is a negotiable instrument. Also excluded from zero-rating in paragraph (a) is a financial service that relates to a debt arising from a loan, the funds of which are primarily for use in Canada.

Paragraphs (b) and (c) provide that a financial service is not zero-rated if it relates to a debt arising from the purchase of real property situated in Canada or personal property for use primarily in Canada. For example, financial services relating to a mortgage taken out by a non-resident in respect of property situated in Canada are not zero-rated. Paragraph (d) states that a financial service is not to be zero-rated if it relates to a debt and the debt is for the purchase of a service performed primarily in Canada.

Paragraph (e) states that a financial service relating to the buying or selling of securities as a principal, other than in the capacity of an underwriter, is not zero-rated and, therefore, is exempt. Therefore, the purchase and sale of securities on the secondary market where the investment dealer acts as a principal are exempt transactions, regardless of the residence of the customer. The underwriting of a new security issue is zero-rated if the issuer of the security is not a resident in Canada.

Section 2 "Exports" of Insurance Services

Section 2 provides that financial services relating to an insurance policy issued by a financial institution (other than services relating to investments of the institution) are zero-rated to the extent that they relate to:

(a) the provision of a life or accident and sickness insurance policy (other than a group policy) to a non-resident person;

(b) the provision of a group life or accident and sickness insurance policy to individuals that are non-resident individuals;

(c) the provision of an insurance policy in respect of real property situated outside Canada; and

(d) the provision of other types of policies that relate to risks ordinarily situated outside Canada.

In all other respects, the provision of an insurance policy is treated as an exempt supply. In cases where an insurer provides both exempt and zero-rated services, the insurer is eligible to claim an input tax credit for purchases to the extent they relate to the supply of zero-rated services.

Section 3 Precious Metals

The supply of precious metals by a refiner is zero-rated under this section. In addition, the supply of precious metals by a person on whose behalf the precious metals were refined is zero-rated. All subsequent supplies of precious metals are exempted. Precious metals are defined in subsection 123(1) of the Act.

SCHEDULE VII

(Sections 213 and 217)

Non-Taxable Importations

Schedule VII enumerates a short list of goods of different classes that, upon importation into Canada, do not attract application of the GST levied under sections 212 or 218 in Part IX of the Act.

Section 1 Conveyances, settlers' effects, etc.

Goods listed under the tariff classification numbers specified in this section are relieved from GST upon importation to the same extent that they are relieved from customs duties.

Included in this list are foreign-based conveyances engaged in transporting passengers or goods to and from Canada, tourists' baggage, settlers' effects, foreign diplomat's effects, purchases made abroad and brought back by returning residents, temporary exhibits of public museums, commercial samples admitted temporarily for display and some classes of returnable containers regularly used in Canada's international trade.

Section 2 Prizes and trophies won abroad

This section allows someone who is awarded or wins a medal, trophy or other prize (other than a merchantable good, such as an automobile) outside Canada to import the prize free of GST.

Section 3 Tourist literature

This section allows tourist literature of governments or other organizations described in the section to be imported free of GST when such literature is for public distribution without charge.

Section 4 Goods donated to charities

Section 4 of Schedule VII allows goods that have been donated outside Canada and subsequently imported by a charity to be imported free of GST. "Charity" is defined in subsection 123(1) of the Excise Tax Act.

Section 5 Warranty replacement parts

This section relieves from GST warranty replacement parts sent to an individual in Canada -- this, on the premise that the individual will previously have paid GST on the original parts purchased or imported into Canada, along with any implicit warranty costs. Taxing the replacement parts provided free under a warranty would effectively result in double taxation.

Section 6 Zero-rated supplies

Certain domestic supplies of goods are zero-rated in Schedule VI -- for example, many food and agricultural products. This section extends the same treatment to such goods when imported.

Section 7 Imported goods under $40

Section 7 provides that GST does not apply to the importation of goods (e.g., gifts sent by non-residents to persons in Canada) having a value of not more than $40, unless the goods are prescribed for purposes of this section. The $40 threshold parallels the threshold under the existing Postal and Courier Imports Remission Orders. Prescribed goods will include items such as alcohol, tobacco products and processed rolls of film -- all of which are currently excluded from the Postal and Courier Imports Remission Orders.

Section 8 Prescribed imports

Section 8 provides for the granting of relief from GST on importations of goods by way of regulation made by the Governor in Council. It is contemplated that certain temporary imports (e.g., goods imported solely for the purpose of having warranty work or other services performed on them) would be included in these regulations.

As well, section 8 would allow for GST relief to be granted to an importation of goods because of circumstances peculiar to that particular importation.